

## 16A C.J.S. Constitutional Law § 786

Corpus Juris Secundum | June 2021 Update

### Constitutional Law

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### PART III. Overview of Protected Personal Rights and Freedoms; Police Power

#### IX. Personal, Civil, and Political Rights and Freedoms

##### C. Personal Liberty

##### 3. Right to Travel

##### a. In General

## § 786. Interstate travel

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### West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#) 🔑1280

**The right of interstate travel is a basic or fundamental right recognized and guaranteed by the Constitution.**

The right of interstate travel is a basic or fundamental right recognized and guaranteed by the United States Constitution<sup>1</sup> and is virtually unqualified.<sup>2</sup> The right to travel is constitutionally protected against private as well as public encroachment.<sup>3</sup>

Although the right to travel is not expressly contained in the United States Constitution, it has been recognized as a basic elementary right emanating from the creation of the federal union<sup>4</sup> and as an inherent component of a free society.<sup>5</sup> It has been found in the privileges and immunities,<sup>6</sup> due process,<sup>7</sup> equal protection, and commerce clauses;<sup>8</sup> in the First Amendment;<sup>9</sup> and in some state constitutions.<sup>10</sup>

The constitutional right to travel embraces at least three different components: (1) it protects the right of a citizen of one state to enter and to leave another state; (2) it protects the right to be treated as a welcome visitor rather than an unfriendly alien when

temporarily present in the second state; and (3) for those travelers who elect to become permanent residents, it protects the right to be treated like other citizens of that state.<sup>11</sup> Thus, the right includes freedom to enter and abide in any state in the union<sup>12</sup> and insures new residents the same right to vital government benefits and privileges in the states to which they migrate as are enjoyed by other residents.<sup>13</sup> Hence, the purpose of inhibiting migration into a state is constitutionally impermissible.<sup>14</sup> For instance, a state may no more try to fence out those indigents who seek better public medical facilities than it may fence out indigents generally<sup>15</sup> and may not render nonresidents of the state ineligible for Medicaid benefits at a private facility within the state.<sup>16</sup>

For a regulation merely to have an effect on travel is not sufficient to raise an issue of constitutional dimension,<sup>17</sup> and an otherwise constitutional law that incidentally discourages migration is not necessarily rendered suspect or invalid merely because of its incidental effect on the right to travel.<sup>18</sup> Rather, the right is implicated when a statute actually deters travel, when impeding travel is its primary objective, or when it uses any classification which serves to penalize an exercise of that right.<sup>19</sup>

## CUMULATIVE SUPPLEMENT

### Cases:

United States citizens who were placed on screening list in federal terrorism database failed to state substantive due process claim based on fundamental right to travel; even if citizens were inconvenienced by secondary inspections, prolonged searches, and travel delays at airports, such did not constitute significant interference with freedom of movement. [U.S. Const. Amend. 5](#). [Kovac v. Wray](#), 363 F. Supp. 3d 721 (N.D. Tex. 2019).

## [END OF SUPPLEMENT]

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### Footnotes

- 1 U.S.—[Saenz v. Roe](#), 526 U.S. 489, 119 S. Ct. 1518, 143 L. Ed. 2d 689 (1999); [Selevan v. New York Thruway Authority](#), 584 F.3d 82 (2d Cir. 2009); [League of United Latin American Citizens v. Bredesen](#), 500 F.3d 523 (6th Cir. 2007).  
Idaho—[In re Bermudes](#), 141 Idaho 157, 106 P.3d 1123 (2005).  
Iowa—[State v. Willard](#), 756 N.W.2d 207 (Iowa 2008).  
Kan.—[State v. Hershberger](#), 27 Kan. App. 2d 485, 5 P.3d 1004 (2000).  
Mont.—[Hood v. Hood](#), 2012 MT 158, 365 Mont. 442, 282 P.3d 671 (2012).  
N.J.—[In re Contest of November 8, 2011 General Election of Office of New Jersey General Assembly](#), 210 N.J. 29, 40 A.3d 684 (2012).  
Wash.—[Katare v. Katare](#), 175 Wash. 2d 23, 283 P.3d 546 (2012), cert. denied, 133 S. Ct. 889, 184 L. Ed. 2d 661 (2013).
- 2 U.S.—[Califano v. Gautier Torres](#), 435 U.S. 1, 98 S. Ct. 906, 55 L. Ed. 2d 65 (1978); [Eunique v. Powell](#), 302 F.3d 971 (9th Cir. 2002).
- 3 U.S.—[Volunteer Medical Clinic, Inc. v. Operation Rescue](#), 948 F.2d 218 (6th Cir. 1991).  
Pa.—[Wert v. Com., Dept. of Transp.](#), 821 A.2d 182 (Pa. Commw. Ct. 2003).
- 4 Cal.—[Tobe v. City of Santa Ana](#), 9 Cal. 4th 1069, 40 Cal. Rptr. 2d 402, 892 P.2d 1145 (1995).  
Minn.—[LaChapelle v. Mitten](#), 607 N.W.2d 151 (Minn. Ct. App. 2000).  
N.Y.—[Aumick v. Bane](#), 161 Misc. 2d 271, 612 N.Y.S.2d 766 (Sup 1994).
- 5 Cal.—[Independent Roofing Contractors of California Unilateral Apprenticeship Committee v. California Apprenticeship Council](#), 114 Cal. App. 4th 1330, 9 Cal. Rptr. 3d 477 (3d Dist. 2003), as modified, (Jan. 21, 2004).
- 6 U.S.—[Bethesda Lutheran Homes and Services, Inc. v. Leean](#), 122 F.3d 443 (7th Cir. 1997).

Cal.—*Independent Roofing Contractors of California Unilateral Apprenticeship Committee v. California Apprenticeship Council*, 114 Cal. App. 4th 1330, 9 Cal. Rptr. 3d 477 (3d Dist. 2003), as modified, (Jan. 21, 2004).

U.S.—*Callaway v. Samson*, 193 F. Supp. 2d 783 (D.N.J. 2002).

U.S.—*Bethesda Lutheran Homes and Services, Inc. v. Leean*, 122 F.3d 443 (7th Cir. 1997).

Wash.—*Spence v. Kaminski*, 103 Wash. App. 325, 12 P.3d 1030 (Div. 3 2000), publication ordered, (Nov. 21, 2000).

U.S.—*Pencak v. Concealed Weapon Licensing Bd. for County of St. Clair*, 872 F. Supp. 410 (E.D. Mich. 1994).

Alaska—*Alaska Pacific Assur. Co. v. Brown*, 687 P.2d 264 (Alaska 1984).

Cal.—*In re Marriage of Fingert*, 221 Cal. App. 3d 1575, 271 Cal. Rptr. 389 (2d Dist. 1990).

N.Y.—*City of New York v. Andrews*, 186 Misc. 2d 533, 719 N.Y.S.2d 442 (Sup 2000).

Wis.—*County of Fond du Lac v. Derksen*, 2002 WI App 160, 256 Wis. 2d 490, 647 N.W.2d 922 (Ct. App. 2002).

Wyo.—*Watt v. Watt*, 971 P.2d 608 (Wyo. 1999) (overruled on other grounds by, *Arnott v. Arnott*, 2012 WY 167, 293 P.3d 440 (Wyo. 2012)).

**Greater protection under state constitution**

N.H.—*Tomasko v. Dubuc*, 145 N.H. 169, 761 A.2d 407 (2000).

U.S.—*Saenz v. Roe*, 526 U.S. 489, 119 S. Ct. 1518, 143 L. Ed. 2d 689 (1999); *Michael C. ex rel. Stephen C. v. Radnor Tp. School Dist.*, 202 F.3d 642, 141 Ed. Law Rep. 495 (3d Cir. 2000); *Chavez v. Illinois State Police*, 251 F.3d 612, 49 Fed. R. Serv. 3d 1127 (7th Cir. 2001); *Walsh v. City and County of Honolulu*, 423 F. Supp. 2d 1094 (D. Haw. 2006).

Okla.—*Edmondson v. Pearce*, 2004 OK 23, 91 P.3d 605 (Okla. 2004), as corrected, (July 28, 2004).

Tex.—*Rooms With a View, Inc. v. Private Nat. Mortg. Ass'n, Inc.*, 7 S.W.3d 840 (Tex. App. Austin 1999).

U.S.—*Attorney General of New York v. Soto-Lopez*, 476 U.S. 898, 106 S. Ct. 2317, 90 L. Ed. 2d 899 (1986).

Minn.—*LaChapelle v. Mitten*, 607 N.W.2d 151 (Minn. Ct. App. 2000).

**Freedom to migrate from one state to another**

Wis.—*Brandmiller v. Arreola*, 189 Wis. 2d 215, 525 N.W.2d 353 (Ct. App. 1994), decision aff'd, 199 Wis. 2d 528, 544 N.W.2d 894 (1996).

**Freedom to migrate, resettle, and find new job**

Md.—*Braun v. Headley*, 131 Md. App. 588, 750 A.2d 624 (2000).

U.S.—*Califano v. Gautier Torres*, 435 U.S. 1, 98 S. Ct. 906, 55 L. Ed. 2d 65 (1978).

U.S.—*Shapiro v. Thompson*, 394 U.S. 618, 89 S. Ct. 1322, 22 L. Ed. 2d 600 (1969) (overruled in part on other grounds by, *Edelman v. Jordan*, 415 U.S. 651, 94 S. Ct. 1347, 39 L. Ed. 2d 662 (1974)).

Conn.—*Carofano v. City of Bridgeport*, 196 Conn. 623, 495 A.2d 1011 (1985).

Del.—*Alex S. A. v. Julia A.*, 419 A.2d 965 (Del. Fam. Ct. 1980).

N.Y.—*Aumick v. Bane*, 161 Misc. 2d 271, 612 N.Y.S.2d 766 (Sup 1994).

U.S.—*Memorial Hospital v. Maricopa County*, 415 U.S. 250, 94 S. Ct. 1076, 39 L. Ed. 2d 306 (1974).

U.S.—*Bethesda Lutheran Homes and Services, Inc. v. Leean*, 122 F.3d 443 (7th Cir. 1997).

U.S.—*Soto-Lopez v. New York City Civil Service Com'n*, 755 F.2d 266 (2d Cir. 1985), judgment aff'd, 476 U.S. 898, 106 S. Ct. 2317, 90 L. Ed. 2d 899 (1986).

U.S.—*Michael C. ex rel. Stephen C. v. Radnor Tp. School Dist.*, 202 F.3d 642, 141 Ed. Law Rep. 495 (3d Cir. 2000).

U.S.—*Attorney General of New York v. Soto-Lopez*, 476 U.S. 898, 106 S. Ct. 2317, 90 L. Ed. 2d 899 (1986); *Torraco v. Port Authority of New York and New Jersey*, 615 F.3d 129 (2d Cir. 2010); *Maldonado v. Houstoun*, 157 F.3d 179 (3d Cir. 1998); *Angus Partners LLC v. Walder*, 2014 WL 4639552 (S.D. N.Y. 2014).

Cal.—*People v. Parker*, 141 Cal. App. 4th 1297, 46 Cal. Rptr. 3d 888 (2d Dist. 2006).

Idaho—*State v. Wilder*, 138 Idaho 644, 67 P.3d 839 (Ct. App. 2003).

Ill.—*Ball v. Village of Streamwood*, 281 Ill. App. 3d 679, 216 Ill. Dec. 251, 665 N.E.2d 311 (1st Dist. 1996).

Minn.—*Schatz v. Interfaith Care Center*, 811 N.W.2d 643 (Minn. 2012).

Miss.—*Mississippi High School Activities Ass'n, Inc. v. Coleman By and on Behalf of Laymon*, 631 So. 2d 768, 89 Ed. Law Rep. 692 (Miss. 1994).

N.Y.—*Aumick v. Bane*, 161 Misc. 2d 271, 612 N.Y.S.2d 766 (Sup 1994).

Wash.—[State v. Lee](#), 135 Wash. 2d 369, 957 P.2d 741 (1998).

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PART III. Overview of Protected Personal Rights and Freedoms; Police Power

IX. Personal, Civil, and Political Rights and Freedoms

C. Personal Liberty

3. Right to Travel

a. In General

§ 787. Intrastate travel

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West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#) 🔑1283

**Under some authority but not other, intrastate travel is afforded federal constitutional protection.**

It has been stated that the right to intrastate travel is not afforded federal constitutional protection.<sup>1</sup> It has also been held, however, that there is a right to intrastate travel<sup>2</sup> and this right is sometimes said to be fundamental.<sup>3</sup> The right includes the right to change one's residence within a state<sup>4</sup> although it does not allow one to travel anywhere and everywhere within the state at his or her pleasure.<sup>5</sup>

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Footnotes

<sup>1</sup> U.S.—[Wardwell v. Board of Ed. of City School Dist. of City of Cincinnati](#), 529 F.2d 625 (6th Cir. 1976); [D.L. v. Unified School Dist. No. 497](#), 596 F.3d 768, 254 Ed. Law Rep. 49 (10th Cir. 2010); [Hammel v.](#)

Tri-County Metropolitan Transp. Dist. of Oregon, 955 F. Supp. 2d 1205 (D. Or. 2013), appeal dismissed, (9th Cir. 13-35661) (Oct. 16, 2013) and appeal dismissed, (9th Cir. 13-35612) (Jan. 23, 2014) and appeal dismissed, (9th Cir. 13-35614) (Jan. 23, 2014).

N.Y.—New York State Dept. of Transp. v. L.O.K. Aviation, 134 Misc. 2d 136, 509 N.Y.S.2d 1016 (Dist. Ct. 1986).

2 U.S.—Spencer v. Casavilla, 903 F.2d 171 (2d Cir. 1990); Johnson v. City of Cincinnati, 310 F.3d 484, 2002 FED App. 0332P (6th Cir. 2002).

Cal.—People v. Aleksanyan, 231 Cal. App. 4th Supp. 1, 180 Cal. Rptr. 3d 375 (App. Dep't Super. Ct. 2014).

Minn.—State v. Cuypers, 559 N.W.2d 435 (Minn. Ct. App. 1997).

Mont.—In re Marriage of Guffin, 2009 MT 169, 350 Mont. 489, 209 P.3d 225 (2009).

N.Y.—City of New York v. Andrews, 186 Misc. 2d 533, 719 N.Y.S.2d 442 (Sup 2000).

N.C.—Standley v. Town of Woodfin, 362 N.C. 328, 661 S.E.2d 728 (2008).

N.D.—State v. Holbach, 2009 ND 37, 763 N.W.2d 761 (N.D. 2009).

Ohio—State v. Burnett, 93 Ohio St. 3d 419, 2001-Ohio-1581, 755 N.E.2d 857, 107 A.L.R.5th 821 (2001).

Wis.—City of Milwaukee v. K.F., 145 Wis. 2d 24, 426 N.W.2d 329 (1988).

**Under state constitution**

U.S.—Catron v. City of St. Petersburg, 658 F.3d 1260 (11th Cir. 2011) (under Florida constitution); Pencak v. Concealed Weapon Licensing Bd. for County of St. Clair, 872 F. Supp. 410 (E.D. Mich. 1994).

Mass.—Com. v. Weston W., 455 Mass. 24, 913 N.E.2d 832 (2009).

N.C.—Standley v. Town of Woodfin, 362 N.C. 328, 661 S.E.2d 728 (2008).

3 U.S.—Catron v. City of St. Petersburg, 658 F.3d 1260 (11th Cir. 2011); Ritchie v. Coldwater Community Schools, 947 F. Supp. 2d 791 (W.D. Mich. 2013), appeal dismissed, (6th Cir. 13-1770) (Feb. 10, 2014).

Fla.—State v. J.P., 907 So. 2d 1101 (Fla. 2004).

Minn.—State v. Cuypers, 559 N.W.2d 435 (Minn. Ct. App. 1997).

N.C.—Standley v. Town of Woodfin, 362 N.C. 328, 661 S.E.2d 728 (2008).

Wash.—City of Seattle v. McConahy, 86 Wash. App. 557, 937 P.2d 1133 (Div. 1 1997).

Wis.—State v. Ruesch, 214 Wis. 2d 548, 571 N.W.2d 898 (Ct. App. 1997).

As to standard of review of fundamental right to travel, see § 790.

4 Wis.—Brandmiller v. Arreola, 189 Wis. 2d 215, 525 N.W.2d 353 (Ct. App. 1994), decision aff'd, 199 Wis. 2d 528, 544 N.W.2d 894 (1996).

5 U.S.—Hannemann v. Southern Door County School Dist., 833 F. Supp. 2d 1068, 280 Ed. Law Rep. 263 (E.D. Wis. 2011), aff'd, 673 F.3d 746, 278 Ed. Law Rep. 70 (7th Cir. 2012) (under Wisconsin law).

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##### a. In General

## § 788. International travel

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### West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#) 🔑1284

**The courts are not in agreement as to whether the right to international travel is a fundamental right.**

It has been said that the freedom to travel out of the country is a fundamental constitutional right or liberty,<sup>1</sup> that restrictions on international travel must be carefully tailored to serve a substantial and legitimate government interest,<sup>2</sup> and that a United States citizen's constitutional right to travel abroad may not be curtailed by the state in the absence of criminal conviction and penal incarceration.<sup>3</sup>

However, it has also been said that the freedom of international travel, although a protected and valued right,<sup>4</sup> is no more than an aspect of the liberty interest protected by due process<sup>5</sup> and is not a fundamental right protected by the Constitution.<sup>6</sup> Therefore, legislation which is said to infringe that freedom is not to be judged by the same standard applied to laws that penalize the right of interstate travel,<sup>7</sup> and an infringement of the freedom of international travel violates substantive due process requirements only if it is wholly irrational.<sup>8</sup>

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Footnotes

- 1 U.S.—*U.S. v. Shaheen*, 445 F.2d 6 (7th Cir. 1971); *In re Aircrash In Bali, Indonesia on April 22, 1974*, 684 F.2d 1301, 11 Fed. R. Evid. Serv. 875 (9th Cir. 1982).
- 2 U.S.—*In re Aircrash In Bali, Indonesia on April 22, 1974*, 684 F.2d 1301, 11 Fed. R. Evid. Serv. 875 (9th Cir. 1982).  
**Invalid injunction**  
An injunction issued in a postdivorce proceeding which permanently enjoined a former wife from traveling outside the continental United States without the former husband's consent, in response to the husband's petition to modify the parent-child relationship after the wife had taken the child to Mexico, violated the mother's constitutional right to travel; the injunction was overly broad, unreasonably restrictive, and unrelated to either the child's best interest or international child-abduction prevention.  
Tex.—*Arredondo v. Betancourt*, 383 S.W.3d 730 (Tex. App. Houston 14th Dist. 2012).
- 3 N.Y.—*Estate of Sanchez*, 126 Misc. 2d 199, 481 N.Y.S.2d 601 (Sur. Ct. 1984).
- 4 Okla.—*Edmondson v. Pearce*, 2004 OK 23, 91 P.3d 605 (Okla. 2004), as corrected, (July 28, 2004).
- 5 U.S.—*Califano v. Aznavorian*, 439 U.S. 170, 99 S. Ct. 471, 58 L. Ed. 2d 435 (1978); *Duncan v. Goedeke and Cleasey*, 837 F. Supp. 846 (S.D. Tex. 1993).  
Okla.—*Edmondson v. Pearce*, 2004 OK 23, 91 P.3d 605 (Okla. 2004), as corrected, (July 28, 2004).
- 6 U.S.—*Eunique v. Powell*, 302 F.3d 971 (9th Cir. 2002); *Jack v. Trans World Airlines, Inc.*, 854 F. Supp. 654, 29 Fed. R. Serv. 3d 896 (N.D. Cal. 1994); *Dearth v. Holder*, 893 F. Supp. 2d 59 (D.D.C. 2012); *Duncan v. Goedeke and Cleasey*, 837 F. Supp. 846 (S.D. Tex. 1993).
- 7 U.S.—*Califano v. Aznavorian*, 439 U.S. 170, 99 S. Ct. 471, 58 L. Ed. 2d 435 (1978).  
**Not same as interstate travel**  
U.S.—*Williams v. Wisconsin*, 336 F.3d 576 (7th Cir. 2003).
- 8 **Seizure of passport**  
U.S.—*Duncan v. Goedeke and Cleasey*, 837 F. Supp. 846 (S.D. Tex. 1993).

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## 16A C.J.S. Constitutional Law § 789

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### Constitutional Law

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##### 3. Right to Travel

##### a. In General

## § 789. Limitations and restrictions on right

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### West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#)  1280 to 1282, 1285 to 1288

**The right to travel is not absolute but rather is subject to reasonable regulation.**

Not all state action affecting interstate movement penalizes the right to travel<sup>1</sup> as individuals are protected only from those statutes, rules, and regulations that unreasonably burden or restrict the right to travel.<sup>2</sup> The right to travel is subject to reasonable regulation<sup>3</sup> as to time and place.<sup>4</sup> There is no right to travel for illicit purposes.<sup>5</sup> In an emergency situation, the right to travel may be temporarily limited or suspended.<sup>6</sup> Burdens on a single mode of transportation do not implicate the right to interstate travel<sup>7</sup> as an individual has no fundamental right to use any particular means of transportation.<sup>8</sup>

The right to travel may be qualified by the state as a consequence of the commission of, and conviction for, a crime.<sup>9</sup> A person who has committed an offense punishable by imprisonment has only a qualified right to leave the jurisdiction prior to arrest or conviction.<sup>10</sup> A probationer has no constitutional entitlement to travel, so that a state's enforcement of a policy that curtails

the right of probationers to travel does not violate their constitutional rights,<sup>11</sup> assuming that the restrictions are reasonably necessary to further a legitimate governmental interest,<sup>12</sup> and not excessive.<sup>13</sup> Similarly, parolees' right to travel is extinguished for the entire balance of their sentences.<sup>14</sup>

The constitutional right to travel does not require that a person who travels to another jurisdiction be given benefits superior to those enjoyed by its other residents if the newcomer enjoyed those benefits in another place<sup>15</sup> and does not destroy the independent power of each state to enact statutes uniformly applicable to all of its residents.<sup>16</sup>

The right to travel is not contravened when the State enacts and enforces reasonable regulations to promote safety.<sup>17</sup> The right to travel on public streets may be regulated as to time and manner of its exercise when deemed necessary to public safety.<sup>18</sup>

The freedom to travel abroad is a relative right that may be limited in certain situations<sup>19</sup> and is subject to reasonable governmental regulation.<sup>20</sup> This freedom is subordinate to national security and foreign policy considerations.<sup>21</sup>

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#### Footnotes

- 1 Idaho—[Miller v. Stauffer Chemical Co.](#), 99 Idaho 299, 581 P.2d 345 (1978).
- 2 **Registration check on out-of-state license plate not unreasonable burden**  
U.S.—[U.S. v. Walraven](#), 892 F.2d 972 (10th Cir. 1989).
- 3 U.S.—[Navis v. Henry](#), 456 F. Supp. 99 (E.D. Va. 1978).  
Idaho—[State v. Wilder](#), 138 Idaho 644, 67 P.3d 839 (Ct. App. 2003).  
Ky.—[Bess v. Bracken County Fiscal Court](#), 210 S.W.3d 177 (Ky. Ct. App. 2006).  
Me.—[State v. Elliott](#), 2010 ME 3, 987 A.2d 513 (Me. 2010).  
Tex.—[Ex parte Robinson](#), 80 S.W.3d 709 (Tex. App. Houston 1st Dist. 2002), petition for discretionary review granted, (Nov. 20, 2002) and judgment aff'd, 116 S.W.3d 794 (Tex. Crim. App. 2003).
- 4 U.S.—[U.S. v. Chalk](#), 441 F.2d 1277 (4th Cir. 1971); [American Civil Liberties Union of West Tennessee, Inc. v. Chandler](#), 458 F. Supp. 456 (W.D. Tenn. 1978).
- 5 U.S.—[U.S. v. Brockdorff](#), 992 F. Supp. 22 (D.D.C. 1997); [U.S. v. Schneider](#), 817 F. Supp. 2d 586, 86 Fed. R. Evid. Serv. 821 (E.D. Pa. 2011); [U.S. v. Bredimus](#), 234 F. Supp. 2d 639 (N.D. Tex. 2002), aff'd, 352 F.3d 200 (5th Cir. 2003).  
Cal.—[Hatch v. Superior Court](#), 80 Cal. App. 4th 170, 94 Cal. Rptr. 2d 453 (4th Dist. 2000), as modified on denial of reh'g, (Apr. 26, 2000).  
Okla.—[Edmondson v. Pearce](#), 2004 OK 23, 91 P.3d 605 (Okla. 2004), as corrected, (July 28, 2004).
- 6 Cal.—[In re Juan C.](#), 28 Cal. App. 4th 1093, 33 Cal. Rptr. 2d 919 (2d Dist. 1994).
- 7 U.S.—[Miller v. Reed](#), 176 F.3d 1202, 163 A.L.R. Fed. 739 (9th Cir. 1999).
- 8 Ill.—[Guerrero v. Ryan](#), 272 Ill. App. 3d 945, 209 Ill. Dec. 408, 651 N.E.2d 586 (1st Dist. 1995).  
Neb.—[State v. Meints](#), 223 Neb. 199, 388 N.W.2d 813 (1986).  
N.Y.—[Kaehny v. Lynn](#), 172 Misc. 2d 295, 659 N.Y.S.2d 388 (Sup 1997).
- 9 U.S.—[Jones v. Helms](#), 452 U.S. 412, 101 S. Ct. 2434, 69 L. Ed. 2d 118 (1981).  
Ga.—[Davis v. State](#), 248 Ga. 783, 286 S.E.2d 430 (1982).  
Mass.—[Com. v. George](#), 430 Mass. 276, 717 N.E.2d 1285 (1999).  
Wash.—[State v. McBride](#), 74 Wash. App. 460, 873 P.2d 589 (Div. 3 1994).
- 10 Ill.—[People v. Laughlin](#), 293 Ill. App. 3d 194, 227 Ill. Dec. 680, 687 N.E.2d 1162 (2d Dist. 1997).
- 11 U.S.—[Pelland v. Rhode Island](#), 317 F. Supp. 2d 86 (D.R.I. 2004).  
Cal.—[In re Antonio R.](#), 78 Cal. App. 4th 937, 93 Cal. Rptr. 2d 212 (4th Dist. 2000).  
Mich.—[People v. Roth](#), 154 Mich. App. 257, 397 N.W.2d 196 (1986).
- 12 Cal.—[People v. Smith](#), 152 Cal. App. 4th 1245, 62 Cal. Rptr. 3d 316 (2d Dist. 2007).

13

**Juvenile living in Mexico**

Conditions of probation imposed on a juvenile, after his adjudication as a ward for smuggling marijuana from Mexico, forbidding the juvenile from entering the United States except to attend school, to work, or to visit his family, violated the juvenile's rights to freedom of travel, association, and assembly; the conditions were not narrowly drawn but covered the entire United States, and were not tailored to the juvenile's social situation since the juvenile lived with his mother in Mexico, did not work or attend school, and had a bad relationship with his father in the United States.

Cal.—*Alex O. v. Superior Court*, 174 Cal. App. 4th 1176, 95 Cal. Rptr. 3d 438 (4th Dist. 2009).

14

U.S.—*Williams v. Wisconsin*, 336 F.3d 576 (7th Cir. 2003).

15

U.S.—*Califano v. Gautier Torres*, 435 U.S. 1, 98 S. Ct. 906, 55 L. Ed. 2d 65 (1978).

**Absentee ballot**

Statutory provisions precluding a former state resident currently residing in Puerto Rico from voting via absentee ballot in a presidential election did not violate the voter's right to travel; loss of the right to vote for president was a consequence of the voter's decision to become a citizen of the territory in a constitutional scheme that allocated the right to appoint electors to states but not to territories, and the laws did not impair the voter's opportunity to be treated equally in Puerto Rico.

U.S.—*Romeu v. Cohen*, 265 F.3d 118, 1 A.L.R. Fed. 2d 639 (2d Cir. 2001).

16

Idaho—*Gordon v. State*, 108 Idaho 178, 697 P.2d 1192 (Ct. App. 1985).

17

Ala.—*Snively v. City of Huntsville*, 785 So. 2d 1162 (Ala. Crim. App. 2000).

Ky.—*Bess v. Bracken County Fiscal Court*, 210 S.W.3d 177 (Ky. Ct. App. 2006).

Me.—*State v. Elliott*, 2010 ME 3, 987 A.2d 513 (Me. 2010).

N.C.—*State v. Dobbins*, 277 N.C. 484, 178 S.E.2d 449 (1971).

**Curfew on minors**

Iowa—*City of Panora v. Simmons*, 445 N.W.2d 363, 83 A.L.R.4th 1035 (Iowa 1989).

Wis.—*City of Milwaukee v. K.F.*, 145 Wis. 2d 24, 426 N.W.2d 329 (1988).

18

N.C.—*State v. Dobbins*, 277 N.C. 484, 178 S.E.2d 449 (1971).

19

U.S.—*Berrigan v. Sigler*, 358 F. Supp. 130 (D.D.C. 1973), judgment aff'd, 499 F.2d 514, 18 Fed. R. Serv. 2d 1081 (D.C. Cir. 1974).

20

U.S.—*Haig v. Agee*, 453 U.S. 280, 101 S. Ct. 2766, 69 L. Ed. 2d 640 (1981).

21

U.S.—*Haig v. Agee*, 453 U.S. 280, 101 S. Ct. 2766, 69 L. Ed. 2d 640 (1981).

## 16A C.J.S. Constitutional Law § 790

Corpus Juris Secundum | June 2021 Update

### Constitutional Law

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### PART III. Overview of Protected Personal Rights and Freedoms; Police Power

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## § 790. Standard of review

[Topic Summary](#) | [References](#) | [Correlation Table](#)

### West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#)  1280, 1281

**An infringement on the right to travel may be subject to strict scrutiny under the compelling state interest test if the degree of impact on the right to travel is sufficient.**

The validity of governmental restrictions on the constitutional right to travel is generally determined by weighing the nature and extent of the infringement against the State's purpose in enacting the statute<sup>1</sup> and the fairness and substantiality of the relationship between the purpose and the restriction.<sup>2</sup> Because the right to travel is generally considered to be a fundamental one,<sup>3</sup> government infringement of the right to travel is subject to strict scrutiny<sup>4</sup> where its impact rises to the level of either deterring migration or penalizing the exercise of the right to travel.<sup>5</sup> Governmental actions that infringe the right to travel are prima facie invalid<sup>6</sup> and are to be countenanced only when they are necessary to serve a compelling governmental interest.<sup>7</sup>

The burden on the government to show a compelling interest sufficient to interfere with a person's right to interstate travel is a heavy one<sup>8</sup> as the government must show that the measure is necessary to achieve, and the least intrusive means of achieving,

the compelling state interest.<sup>9</sup> The means chosen to protect a compelling interest must be closely tailored to the achievement of the goals claimed.<sup>10</sup> If the challenged law imposes a penalty on persons because they exercise their right to travel but there are available other reasonable means which will achieve the State's compelling purpose and impose a lesser burden on constitutionally protected activity, the State must choose the less restrictive method.<sup>11</sup>

Minor restrictions on travel<sup>12</sup> and state regulations which affect the right to travel only indirectly<sup>13</sup> need not satisfy the compelling state interest test in order to survive. A rational basis test of judicial scrutiny is applicable where the right to travel has not been penalized or impaired<sup>14</sup> or where the challenged rule does not establish a classification based on residency or erect a barrier to migration.<sup>15</sup> For instance, because the right to drive is not a fundamental constitutional right,<sup>16</sup> a statute restricting this right need only be rationally related to a legitimate state purpose.<sup>17</sup> Likewise, a travel restriction that is rationally related to a criminal offense requires only a rational basis to survive constitutional scrutiny.<sup>18</sup>

A third level, one of intermediate scrutiny, has also been applied to restrictions on intrastate travel, such as anticruising ordinances,<sup>19</sup> that impose nontrivial burdens on travel.<sup>20</sup> Under this level of scrutiny, a restriction on the right to travel must be narrowly tailored to meet significant governmental objectives<sup>21</sup> while leaving open ample channels for exercising the right.<sup>22</sup>

## CUMULATIVE SUPPLEMENT

### Cases:

All images are not inherently expressive for purposes of pure speech; context matters. [U.S.C.A. Const.Amend. 1. \*Cressman v. Thompson\*, 798 F.3d 938 \(10th Cir. 2015\).](#)

## [END OF SUPPLEMENT]

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### Footnotes

- 1 [U.S.—\*U.S. v. Hare\*, 308 F. Supp. 2d 955 \(D. Neb. 2004\).](#)
- 2 [Alaska—\*Stanek v. Kenai Peninsula Borough\*, 81 P.3d 268 \(Alaska 2003\).](#)
- 3 [Alaska—\*Stanek v. Kenai Peninsula Borough\*, 81 P.3d 268 \(Alaska 2003\).](#)
- 4 [§ 789.](#)  
[U.S.—\*Maldonado v. Houstoun\*, 157 F.3d 179 \(3d Cir. 1998\); \*U.S. v. Bredimus\*, 352 F.3d 200 \(5th Cir. 2003\); \*Matsuo v. U.S.\*, 586 F.3d 1180 \(9th Cir. 2009\); \*Peruta v. County of San Diego\*, 678 F. Supp. 2d 1046 \(S.D. Cal. 2010\).](#)  
[Mass.—\*Com. v. Weston W.\*, 455 Mass. 24, 913 N.E.2d 832 \(2009\).](#)  
[Mich.—\*Musto v. Redford Tp.\*, 137 Mich. App. 30, 357 N.W.2d 791 \(1984\).](#)  
[Miss.—\*Mississippi High School Activities Ass'n, Inc. v. Coleman By and on Behalf of Laymon\*, 631 So. 2d 768, 89 Ed. Law Rep. 692 \(Miss. 1994\).](#)  
[N.J.—\*In re Contest of November 8, 2011 General Election of Office of New Jersey General Assembly\*, 210 N.J. 29, 40 A.3d 684 \(2012\).](#)  
[Tenn.—\*State v. March\*, 395 S.W.3d 738 \(Tenn. Crim. App. 2011\).](#)  
[Wash.—\*State v. Enquist\*, 163 Wash. App. 41, 256 P.3d 1277 \(Div. 2 2011\).](#)  
**Particular application of equal protection analysis**  
[Minn.—\*Schatz v. Interfaith Care Center\*, 811 N.W.2d 643 \(Minn. 2012\).](#)

- 5 U.S.—*Memorial Hospital v. Maricopa County*, 415 U.S. 250, 94 S. Ct. 1076, 39 L. Ed. 2d 306 (1974); *In re U. S. ex rel. Missouri State High School Activities Ass'n*, 682 F.2d 147, 5 Ed. Law Rep. 383 (8th Cir. 1982).  
Alaska—*State v. Wylie*, 516 P.2d 142 (Alaska 1973).  
Conn.—*Leech v. Veterans' Bonus Division Appeals Bd.*, 179 Conn. 311, 426 A.2d 289 (1979).  
Mich.—*Castner v. Clerk of City of Grosse Pointe Park*, 86 Mich. App. 482, 272 N.W.2d 693 (1978).  
**What constitutes "penalty"**  
Even a temporary deprivation of an important right or benefit may be a penalty while a permanent deprivation of a less important right is also a penalty.  
Miss.—*Mississippi High School Activities Ass'n, Inc. v. Coleman By and on Behalf of Laymon*, 631 So. 2d 768, 89 Ed. Law Rep. 692 (Miss. 1994).
- 6 Alaska—*State v. Adams*, 522 P.2d 1125 (Alaska 1974).
- 7 U.S.—*Saenz v. Roe*, 526 U.S. 489, 119 S. Ct. 1518, 143 L. Ed. 2d 689 (1999); *Minnesota Senior Federation, Metropolitan Region v. U.S.*, 273 F.3d 805 (8th Cir. 2001); *Rosenbrahn v. Daugaard*, 2014 WL 6386903 (D.S.D. 2014).  
Conn.—*Carofano v. City of Bridgeport*, 196 Conn. 623, 495 A.2d 1011 (1985).  
Del.—*Alex S. A. v. Julia A.*, 419 A.2d 965 (Del. Fam. Ct. 1980).  
Idaho—*In re Bermudes*, 141 Idaho 157, 106 P.3d 1123 (2005).  
Ind.—*Clark v. Atkins*, 489 N.E.2d 90 (Ind. Ct. App. 1986).  
Mass.—*Com. v. Weston W.*, 455 Mass. 24, 913 N.E.2d 832 (2009).  
Mich.—*People v. Lewis*, 107 Mich. App. 277, 309 N.W.2d 234 (1981).  
Mont.—*Matter of Custody of D.M.G.*, 1998 MT 1, 287 Mont. 120, 951 P.2d 1377 (1998).  
Tenn.—*State v. March*, 395 S.W.3d 738 (Tenn. Crim. App. 2011).
- 8 Mont.—*Matter of Custody of D.M.G.*, 1998 MT 1, 287 Mont. 120, 951 P.2d 1377 (1998).
- 9 Wash.—*Duranceau v. City of Tacoma*, 27 Wash. App. 777, 620 P.2d 533 (1980).
- 10 U.S.—*Grace v. City of Detroit*, 760 F. Supp. 646 (E.D. Mich. 1991).
- 11 Miss.—*Mississippi High School Activities Ass'n, Inc. v. Coleman By and on Behalf of Laymon*, 631 So. 2d 768, 89 Ed. Law Rep. 692 (Miss. 1994).
- 12 U.S.—*Cramer v. Skinner*, 931 F.2d 1020 (5th Cir. 1991).  
**Mooring privileges**  
U.S.—*Hawaiian Navigable Waters Preservation Soc. v. State of Hawaii*, 823 F. Supp. 766 (D. Haw. 1993), *aff'd*, 42 F.3d 1185 (9th Cir. 1994).
- 13 Wis.—*Kuhn v. Musolf*, 143 Wis. 2d 134, 420 N.W.2d 401 (Ct. App. 1988).
- 14 U.S.—*Martinez v. Bynum*, 461 U.S. 321, 103 S. Ct. 1838, 75 L. Ed. 2d 879, 10 Ed. Law Rep. 11 (1983); *Connelly v. Steel Valley School Dist.*, 706 F.3d 209, 289 Ed. Law Rep. 484 (3d Cir. 2013); *Arredondo v. Brockette*, 482 F. Supp. 212 (S.D. Tex. 1979), *decision aff'd*, 648 F.2d 425 (5th Cir. 1981), *judgment aff'd*, 461 U.S. 321, 103 S. Ct. 1838, 75 L. Ed. 2d 879, 10 Ed. Law Rep. 11 (1983).  
Ill.—*Ball v. Village of Streamwood*, 281 Ill. App. 3d 679, 216 Ill. Dec. 251, 665 N.E.2d 311 (1st Dist. 1996).  
Mass.—*Com. v. Weston W.*, 455 Mass. 24, 913 N.E.2d 832 (2009).  
N.Y.—*Cacace v. Seniuk*, 104 Misc. 2d 560, 428 N.Y.S.2d 819 (Sup 1980).
- 15 U.S.—*Schumacher v. Nix*, 965 F.2d 1262 (3d Cir. 1992).
- 16 § 796.
- 17 Ariz.—*Knapp v. Miller*, 165 Ariz. 527, 799 P.2d 868 (Ct. App. Div. 1 1990).
- 18 Ill.—*People v. Laughlin*, 293 Ill. App. 3d 194, 227 Ill. Dec. 680, 687 N.E.2d 1162 (2d Dist. 1997).
- 19 Minn.—*State v. Stallman*, 519 N.W.2d 903 (Minn. Ct. App. 1994).  
Wis.—*Brandmiller v. Arreola*, 199 Wis. 2d 528, 544 N.W.2d 894 (1996).
- 20 Wis.—*Brandmiller v. Arreola*, 199 Wis. 2d 528, 544 N.W.2d 894 (1996).
- 21 Minn.—*State v. Stallman*, 519 N.W.2d 903 (Minn. Ct. App. 1994).  
**Overly broad order**  
Order of divorce court restraining husband from going to city in which wife and children were residing was overly broad and infringed on husband's constitutional right to travel.  
Mont.—*In re Marriage of Kovash*, 260 Mont. 44, 858 P.2d 351 (1993).
- 22 Wis.—*Brandmiller v. Arreola*, 199 Wis. 2d 528, 544 N.W.2d 894 (1996).

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## 16A C.J.S. Constitutional Law § 791

Corpus Juris Secundum | June 2021 Update

### Constitutional Law

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### PART III. Overview of Protected Personal Rights and Freedoms; Police Power

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## § 791. Durational residency requirements

[Topic Summary](#) | [References](#) | [Correlation Table](#)

### West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#)  1282

### Durational residency requirements that penalize travel or interstate migration inherently infringe on the right to travel.

A state, outside certain ill-defined circumstances, cannot classify its citizens by the length of their residence in the state without violating their right to travel<sup>1</sup> and may not create classifications which, by imposing burdens or restrictions on newer residents which do not apply to all residents, deter or penalize the migration of persons who exercise their right to travel to the state.<sup>2</sup> States may violate the constitutional right to travel if they condition eligibility for public benefits<sup>3</sup> or public employment<sup>4</sup> or political rights such as voter eligibility<sup>5</sup> or candidacy for public office<sup>6</sup> on a person's term of residency. However, the relevant distinction when evaluating a claim asserting a violation of the fundamental right to travel is between long-term and short-term residents, not current residents and prospective residents; the right to travel simply is not implicated when there is no discrimination based on the duration of one's residency.<sup>7</sup> In other words, a residency requirement providing that an individual must live within a given political entity to receive a benefit, without regard to the length of time he or she has lived there, does not infringe the right to interstate travel.<sup>8</sup>

Not all durational residency requirements trigger heightened scrutiny of the right to travel.<sup>9</sup> Durational residency requirements that act as penalties on travel or interstate migration<sup>10</sup> inherently infringe on the exercise of the right to travel.<sup>11</sup> However, such requirements are not per se unconstitutional despite the fact that they always burden to some extent the exercise of the right to travel.<sup>12</sup> For instance, the imposition on a welfare applicant of a reasonable waiting period and a residency requirement, the duration of which is dictated only by the nature of the case and the difficulty of investigation, does not place a penalty on the right to travel,<sup>13</sup> and states may properly condition nonessential benefits and rights, such as lower college tuition, on a term of residency.<sup>14</sup> Permissible justifications for discrimination between residents and nonresidents are inapplicable to a nonresident's exercise of the right to move into another state and become a resident of that state.<sup>15</sup>

The determination of whether a residency requirement infringes the right to travel does not depend on what benefits other states choose to provide,<sup>16</sup> and the fact that a citizen may lose a monetary benefit upon migration from a state which provides the benefit does not mean that the right to travel has been infringed.<sup>17</sup>

A state may have a constitutionally sound durational residency requirement for dissolution of marriage.<sup>18</sup> A statutory requirement that an alien who marries a United States citizen while he or she is subject to deportation proceedings live outside the United States for two years after the marriage does not violate the citizen spouse's right of residence.<sup>19</sup>

Durational residency requirements which are justified solely on the basis of budgetary or record-keeping considerations may be struck down as penalizing the exercise of the fundamental right to travel<sup>20</sup> as the conservation of public funds is not a sufficient state interest to sustain a durational residence requirement which, in effect, penalizes the exercise of the right to freely migrate and settle in another state.<sup>21</sup>

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#### Footnotes

- 1 U.S.—*Callaway v. Samson*, 193 F. Supp. 2d 783 (D.N.J. 2002).
- 2 Cal.—*Tobe v. City of Santa Ana*, 9 Cal. 4th 1069, 40 Cal. Rptr. 2d 402, 892 P.2d 1145 (1995).  
**Welfare benefits**  
Neither mere rationality nor some intermediate standard of review would be used to judge constitutionality of statute limiting new residents of state, for 12 months, to Temporary Assistance to Needy Families benefits they would have received in state of their prior residence, which discriminated against some of state's citizens because they had been domiciled in state for less than year.  
U.S.—*Saenz v. Roe*, 526 U.S. 489, 119 S. Ct. 1518, 143 L. Ed. 2d 689 (1999).
- 3 U.S.—*Maldonado v. Houstoun*, 157 F.3d 179 (3d Cir. 1998); *Westenfelder v. Ferguson*, 998 F. Supp. 146 (D.R.I. 1998).  
Minn.—*Mitchell v. Steffen*, 487 N.W.2d 896 (Minn. Ct. App. 1992), *aff'd*, 504 N.W.2d 198 (Minn. 1993).  
N.Y.—*Aumick v. Bane*, 161 Misc. 2d 271, 612 N.Y.S.2d 766 (Sup 1994).  
**Twelve-month limitation**  
A California statute limiting new residents of the state, for 12 months, to Temporary Assistance to Needy Families (TANF) benefits they would have received in the state of their prior residence was unconstitutional as violating the Fourteenth Amendment right to travel; the state's legitimate interest in saving money provided no justification for discrimination among equally eligible citizens, neither the duration of recipients' California residence nor the identity of their prior states of residence had any relevance to their need for benefits, and those factors did not bear any relationship to the state's interest in making an equitable allocation of funds to be distributed among its needy citizens.  
U.S.—*Saenz v. Roe*, 526 U.S. 489, 119 S. Ct. 1518, 143 L. Ed. 2d 689 (1999).

- 4 Mich.—*Musto v. Redford Tp.*, 137 Mich. App. 30, 357 N.W.2d 791 (1984).
- 5 U.S.—*Fisher v. Herseth*, 374 F. Supp. 745 (D.S.D. 1974).
- 6 U.S.—*Brill v. Carter*, 455 F. Supp. 172 (D. Md. 1978).
- Ky.—*Hall v. Miller*, 584 S.W.2d 51 (Ky. Ct. App. 1979).
- 7 U.S.—*Connelly v. Steel Valley School Dist.*, 706 F.3d 209, 289 Ed. Law Rep. 484 (3d Cir. 2013).
- 8 U.S.—*International Organization of Masters, Mates & Pilots v. Andrews*, 831 F.2d 843 (9th Cir. 1987);  
*Fayerweather v. Town of Narragansett Housing Authority*, 848 F. Supp. 19 (D.R.I. 1994).  
Idaho—*Tiffany v. City of Payette*, 121 Idaho 396, 825 P.2d 493 (1992).  
N.H.—*Seabrook Police Ass'n v. Town of Seabrook*, 138 N.H. 177, 635 A.2d 1371 (1993).  
W. Va.—*Morgan v. City of Wheeling*, 205 W. Va. 34, 516 S.E.2d 48 (1999).
- Appropriately defined and uniformly applied**  
A bona fide residence requirement, appropriately defined and uniformly applied, furthers the substantial state interest in assuring that services provided for its residents are enjoyed only by residents; such a requirement does not burden or penalize the constitutional right of interstate travel, for any person is free to move to a state and to establish residence there.  
Fla.—*City of Miami v. Haigley*, 143 So. 3d 1025 (Fla. 3d DCA 2014).
- 9 Alaska—*Stanek v. Kenai Peninsula Borough*, 81 P.3d 268 (Alaska 2003).
- 10 U.S.—*Saenz v. Roe*, 526 U.S. 489, 119 S. Ct. 1518, 143 L. Ed. 2d 689 (1999).
- 11 U.S.—*Dunn v. Blumstein*, 405 U.S. 330, 92 S. Ct. 995, 31 L. Ed. 2d 274 (1972).  
Alaska—*State v. Adams*, 522 P.2d 1125 (Alaska 1974).  
Conn.—*Leech v. Veterans' Bonus Division Appeals Bd.*, 179 Conn. 311, 426 A.2d 289 (1979).  
Me.—*Lambert v. Wentworth*, 423 A.2d 527 (Me. 1980).
- 12 U.S.—*Kreitzer v. Puerto Rico Cars, Inc.*, 417 F. Supp. 498 (D.P.R. 1975).  
**Firefighters**  
A one-year preemployment residency requirement for city firefighter applicants had a rational relationship to a legitimate state end so as not to be an unconstitutional impairment of the right to travel; the classification furthered the purpose of providing a uniform system for the appointment, reduction, removal, and reinstatement of firefighters, and the Commonwealth had a great interest in the safety of its residents and having potential firefighter candidates familiar with the community and local geography.  
Pa.—*Cuvo v. City of Easton*, 678 A.2d 424 (Pa. Commw. Ct. 1996).
- 13 U.S.—*Hawk v. Fenner*, 396 F. Supp. 1 (D.S.D. 1975).
- 14 U.S.—*International Organization of Masters, Mates & Pilots v. Andrews*, 831 F.2d 843 (9th Cir. 1987).  
Cal.—*Gurfinkel v. Los Angeles Community College Dist.*, 121 Cal. App. 3d 1, 175 Cal. Rptr. 201 (2d Dist. 1981).  
Neb.—*Thompson v. Board of Regents of University of Nebraska*, 187 Neb. 252, 188 N.W.2d 840 (1971).  
N.Y.—*Spatt v. State*, 76 Misc. 2d 114, 350 N.Y.S.2d 280 (Ct. Cl. 1972).
- 15 U.S.—*Saenz v. Roe*, 526 U.S. 489, 119 S. Ct. 1518, 143 L. Ed. 2d 689 (1999).
- 16 U.S.—*Fisher v. Reiser*, 610 F.2d 629 (9th Cir. 1979).
- 17 U.S.—*Fisher v. Reiser*, 610 F.2d 629 (9th Cir. 1979).
- 18 U.S.—*Sosna v. State of Iowa*, 360 F. Supp. 1182 (N.D. Iowa 1973), judgment aff'd, 419 U.S. 393, 95 S. Ct. 553, 42 L. Ed. 2d 532, 19 Fed. R. Serv. 2d 925 (1975).  
Pa.—*Stottlemeyer v. Stottlemeyer*, 224 Pa. Super. 123, 302 A.2d 830 (1973), order aff'd, 458 Pa. 503, 329 A.2d 892 (1974).
- 19 U.S.—*Bright v. Parra*, 919 F.2d 31 (5th Cir. 1990).
- 20 U.S.—*Kreitzer v. Puerto Rico Cars, Inc.*, 417 F. Supp. 498 (D.P.R. 1975).
- 21 U.S.—*Saenz v. Roe*, 526 U.S. 489, 119 S. Ct. 1518, 143 L. Ed. 2d 689 (1999).  
Minn.—*Mitchell v. Steffen*, 504 N.W.2d 198 (Minn. 1993).  
N.Y.—*Aumick v. Bane*, 161 Misc. 2d 271, 612 N.Y.S.2d 766 (Sup 1994).

## 16A C.J.S. Constitutional Law § 792

Corpus Juris Secundum | June 2021 Update

### Constitutional Law

Francis C. Amendola, J.D.; Joseph Bassano, J.D.; John Bourdeau, J.D.; M. Elaine Buccieri, J.D.; James Buchwalter, J.D.; Michael N. Giuliano, J.D.; Lonnie E. Griffith, Jr., J.D.; Eleanor L. Grossman, J.D., of the staff of the National Legal Research Group, Inc.; Jill Gustafson, J.D.; Glenda K. Harnad, J.D.; Alan J. Jacobs, J.D.; John Kimpflen, J.D.; Amy L. Kruse, J.D.; Stephen Lease, J.D.; Sonja Larsen, J.D.; Robert B. McKinney, J.D., of the staff of the National Legal Research Group, Inc.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; Thomas Muskus, J.D.; Sally J.T. Necheles, J.D., LL.M.; Karl Oakes, J.D. and Eric C. Surette, J.D.

### PART III. Overview of Protected Personal Rights and Freedoms; Police Power

#### IX. Personal, Civil, and Political Rights and Freedoms

##### C. Personal Liberty

##### 3. Right to Travel

##### a. In General

## § 792. Military personnel

[Topic Summary](#) | [References](#) | [Correlation Table](#)

### West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#)  1186

### The First Amendment protects members of the armed services.

Members of the armed services are entitled to the protections of the First Amendment of the Federal Constitution.<sup>1</sup> The different character of the military community and of the military mission requires a different application of these protections,<sup>2</sup> however, and to strike a proper balance between legitimate military needs and individual liberties, the court considering a First Amendment challenge to military regulations must inquire whether the conditions peculiar to military life dictate affording different treatment to activity arising in a military context.<sup>3</sup>

The doctrine of First Amendment overbreadth, asserted in support of challenges to the imprecise language of a statute, are not exempt from the operation of the principles that military necessity may render permissible within the military that which may be constitutionally impermissible outside it.<sup>4</sup> Furthermore, the rule that in the First Amendment context one may attack an overly

broad statute without demonstrating that his or her own conduct could not be regulated by the statute with the requisite narrow specificity is accorded much less weight in the military context.<sup>5</sup>

There is a wide range of conduct of military personnel to which general military regulations may be applied without infringement of the First Amendment,<sup>6</sup> and the review of military regulations challenged on First Amendment grounds is far more deferential than the constitutional review of similar laws or regulations designed for civilian society.<sup>7</sup> Even if there are marginal applications in which First Amendment rights may be infringed by such regulations, the possibility that conduct which may ultimately be found to be protected by the First Amendment may be included within their prohibition is not sufficient to invalidate them.<sup>8</sup> In a combat-zone situation, a military officer must be afforded substantial latitude in balancing competing military needs and First Amendment rights, which determination should not be upset unless the infringement on First Amendment rights is manifestly unrelated to legitimate military interests.<sup>9</sup>

## CUMULATIVE SUPPLEMENT

### Cases:

The fact that an image depicts another artist's work does not necessarily remove it from the realm of pure speech. [U.S.C.A. Const.Amend. 1. Cressman v. Thompson](#), 798 F.3d 938 (10th Cir. 2015).

## [END OF SUPPLEMENT]

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### Footnotes

- 1 U.S.—[Brown v. Glines](#), 444 U.S. 348, 100 S. Ct. 594, 62 L. Ed. 2d 540 (1980); [Yahr v. Resor](#), 431 F.2d 690 (4th Cir. 1970); [Stein v. Dowling](#), 867 F. Supp. 2d 1087 (S.D. Cal. 2012); [benShalom v. Secretary of Army](#), 489 F. Supp. 964 (E.D. Wis. 1980).
- 2 U.S.—[Brown v. Glines](#), 444 U.S. 348, 100 S. Ct. 594, 62 L. Ed. 2d 540 (1980).  
**Limitations on First Amendment**  
 As an officer in the military, an applicant for admission to an army reserve officers' training corps program would be required to accept certain limitations on First Amendment rights that he would enjoy if he were only a civilian.  
 U.S.—[Blameuser v. Andrews](#), 630 F.2d 538 (7th Cir. 1980).
- 3 U.S.—[Carlson v. Schlesinger](#), 511 F.2d 1327 (D.C. Cir. 1975).
- 4 U.S.—[Parker v. Levy](#), 417 U.S. 733, 94 S. Ct. 2547, 41 L. Ed. 2d 439 (1974).  
 As to the overbreadth doctrine, generally, see § 748.
- 5 U.S.—[Parker v. Levy](#), 417 U.S. 733, 94 S. Ct. 2547, 41 L. Ed. 2d 439 (1974).
- 6 U.S.—[Parker v. Levy](#), 417 U.S. 733, 94 S. Ct. 2547, 41 L. Ed. 2d 439 (1974).
- 7 U.S.—[Goldman v. Weinberger](#), 475 U.S. 503, 106 S. Ct. 1310, 89 L. Ed. 2d 478 (1986).  
**Judicial deference at its apogee**  
 U.S.—[Rumsfeld v. Forum for Academic and Institutional Rights, Inc.](#), 547 U.S. 47, 126 S. Ct. 1297, 164 L. Ed. 2d 156, 206 Ed. Law Rep. 819 (2006).
- 8 U.S.—[Parker v. Levy](#), 417 U.S. 733, 94 S. Ct. 2547, 41 L. Ed. 2d 439 (1974).
- 9 U.S.—[Carlson v. Schlesinger](#), 511 F.2d 1327 (D.C. Cir. 1975).

## 16A C.J.S. Constitutional Law § 793

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### Constitutional Law

Francis C. Amendola, J.D.; Joseph Bassano, J.D.; John Bourdeau, J.D.; M. Elaine Buccieri, J.D.; James Buchwalter, J.D.; Michael N. Giuliano, J.D.; Lonnie E. Griffith, Jr., J.D.; Eleanor L. Grossman, J.D., of the staff of the National Legal Research Group, Inc.; Jill Gustafson, J.D.; Glenda K. Harnad, J.D.; Alan J. Jacobs, J.D.; John Kimpflen, J.D.; Amy L. Kruse, J.D.; Stephen Lease, J.D.; Sonja Larsen, J.D.; Robert B. McKinney, J.D., of the staff of the National Legal Research Group, Inc.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; Thomas Muskus, J.D.; Sally J.T. Necheles, J.D., LL.M.; Karl Oakes, J.D. and Eric C. Surette, J.D.

### PART III. Overview of Protected Personal Rights and Freedoms; Police Power

#### IX. Personal, Civil, and Political Rights and Freedoms

##### C. Personal Liberty

##### 3. Right to Travel

##### b. Particular Applications

## § 793. Relating to travel for purposes of obtaining abortion

[Topic Summary](#) | [References](#) | [Correlation Table](#)

### West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#)  1280 to 1282, 1285 to 1288

**The right to travel includes the right to unimpeded interstate travel to obtain an abortion and other medical services.**

The right to travel includes the right to unimpeded interstate travel to obtain an abortion and other medical services<sup>1</sup> and has been held to have been violated by the actions of abortion protestors engaging in conspiracy to prevent women from obtaining access to abortion facilities.<sup>2</sup> Antiabortion protestors' blockading of abortion clinics with the intention of closing them down, forcing women to make several trips or detours to obtain the desired medical services, impermissibly interfered with and impaired the constitutional right of women seeking abortions to travel freely.<sup>3</sup> However, an antiabortion demonstration blocking access to an abortion clinic which is a purely intrastate travel restriction does not implicate the right of interstate travel.<sup>4</sup>

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### Footnotes

- 1 U.S.—*New York State Nat. Organization for Women v. Terry*, 886 F.2d 1339, 14 Fed. R. Serv. 3d 922 (2d Cir. 1989).
- 2 U.S.—*New York State Nat. Organization for Women v. Terry*, 886 F.2d 1339, 14 Fed. R. Serv. 3d 922 (2d Cir. 1989).
- 3 U.S.—*Roe v. Operation Rescue*, 710 F. Supp. 577 (E.D. Pa. 1989), order *aff'd*, 919 F.2d 857 (3d Cir. 1990).
- 4 U.S.—*Bray v. Alexandria Women's Health Clinic*, 506 U.S. 263, 113 S. Ct. 753, 122 L. Ed. 2d 34, 169 A.L.R. Fed. 649 (1993).

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## 16A C.J.S. Constitutional Law § 794

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### Constitutional Law

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### PART III. Overview of Protected Personal Rights and Freedoms; Police Power

#### IX. Personal, Civil, and Political Rights and Freedoms

##### C. Personal Liberty

##### 3. Right to Travel

##### b. Particular Applications

## § 794. Relating to admission to state bar

[Topic Summary](#) | [References](#) | [Correlation Table](#)

### West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#)  1280 to 1282, 1285 to 1288

**Restrictions on admission of attorneys to state bars have generally been upheld against challenges based on the right to travel.**

A reasonable residency requirement for an applicant for admission to the bar does not impinge on the fundamental right of a citizen to travel interstate.<sup>1</sup>

Other matters relating to attorneys or persons seeking admission to the bar have also been upheld as against contentions that they infringe the right to travel, such as a requirement that applicants for a bar examination be graduates of approved law schools;<sup>2</sup> a rule permitting admission to the bar of a state on a foreign license only if an attorney has practiced in the state of previous admission for a specified period of time;<sup>3</sup> and requirements that foreign attorneys seeking admission to the bar of another jurisdiction be permanent residents of that jurisdiction,<sup>4</sup> that they intend to be residents of that jurisdiction,<sup>5</sup> and that they intend to practice full time as members of the bar of that jurisdiction.<sup>6</sup>

## CUMULATIVE SUPPLEMENT

### Cases:

To establish that there is a credible threat of prosecution, so as to establish a cognizable self-censorship injury for purposes of standing on a First Amendment claim, the plaintiff must demonstrate: first, that the plaintiff seriously wished to engage in expression that is at least arguably forbidden by the pertinent law, and second, that there is at least some minimal probability that the challenged rules will be enforced if violated. [U.S.C.A. Const.Amend. 1. Wollschlaeger v. Governor of Florida, 797 F.3d 859 \(11th Cir. 2015\).](#)

### [END OF SUPPLEMENT]

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### Footnotes

- 1 [U.S.—Suffling v. Bondurant, 339 F. Supp. 257 \(D.N.M. 1972\), judgment aff'd, 409 U.S. 1020, 93 S. Ct. 460, 34 L. Ed. 2d 312 \(1972\).](#)  
[Tenn.—Knowlton v. Board of Law Examiners of Tennessee, 513 S.W.2d 788 \(Tenn. 1974\).](#)
- 2 [U.S.—Moore v. Supreme Court of South Carolina, 447 F. Supp. 527 \(D.S.C. 1977\), aff'd, 577 F.2d 735 \(4th Cir. 1978\).](#)  
[Alaska—Application of Urie, 617 P.2d 505 \(Alaska 1980\).](#)  
[Minn.—Application of Hansen, 275 N.W.2d 790 \(Minn. 1978\).](#)
- 3 [U.S.—Lowrie v. Goldenhersh, 521 F. Supp. 534 \(N.D. Ill. 1981\), decision aff'd, 716 F.2d 401 \(7th Cir. 1983\).](#)
- 4 [U.S.—Brown v. Supreme Court of Virginia, 359 F. Supp. 549 \(E.D. Va. 1973\), judgment aff'd, 414 U.S. 1034, 94 S. Ct. 533, 38 L. Ed. 2d 327 \(1973\) and judgment aff'd, 414 U.S. 1034, 94 S. Ct. 534, 38 L. Ed. 2d 327 \(1973\).](#)  
[Va.—Application of Titus, 213 Va. 289, 191 S.E.2d 798 \(1972\).](#)
- 5 [U.S.—Aronson v. Ambrose, 10 V.I. 613, 479 F.2d 75 \(3d Cir. 1973\).](#)
- 6 [U.S.—Brown v. Supreme Court of Virginia, 359 F. Supp. 549 \(E.D. Va. 1973\), judgment aff'd, 414 U.S. 1034, 94 S. Ct. 533, 38 L. Ed. 2d 327 \(1973\) and judgment aff'd, 414 U.S. 1034, 94 S. Ct. 534, 38 L. Ed. 2d 327 \(1973\).](#)

## 16A C.J.S. Constitutional Law § 795

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### Constitutional Law

Francis C. Amendola, J.D.; Joseph Bassano, J.D.; John Bourdeau, J.D.; M. Elaine Buccieri, J.D.; James Buchwalter, J.D.; Michael N. Giuliano, J.D.; Lonnie E. Griffith, Jr., J.D.; Eleanor L. Grossman, J.D., of the staff of the National Legal Research Group, Inc.; Jill Gustafson, J.D.; Glenda K. Harnad, J.D.; Alan J. Jacobs, J.D.; John Kimpflen, J.D.; Amy L. Kruse, J.D.; Stephen Lease, J.D.; Sonja Larsen, J.D.; Robert B. McKinney, J.D., of the staff of the National Legal Research Group, Inc.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; Thomas Muskus, J.D.; Sally J.T. Necheles, J.D., LL.M.; Karl Oakes, J.D. and Eric C. Surette, J.D.

### PART III. Overview of Protected Personal Rights and Freedoms; Police Power

#### IX. Personal, Civil, and Political Rights and Freedoms

##### C. Personal Liberty

##### 3. Right to Travel

##### b. Particular Applications

## § 795. Relating to child custody

[Topic Summary](#) | [References](#) | [Correlation Table](#)

### West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#)  1280 to 1282, 1285 to 1288

**Under some authority, a custodial parent's right to travel may be subject to the best interests of the child.**

The right to travel, under some authority, carries with it a custodial parent's right to have his or her children move with him or her,<sup>1</sup> and a requirement that a parent with primary physical custody of a child establish that a move to another state is in the best interest of the child violates the parent's right to freedom of travel.<sup>2</sup>

Under some authority, when a custodial parent seeks to relocate, a court determining the best interest of a child involved in the custody dispute must weigh to the custodial parent's right to travel and the benefit to the child from remaining with the custodial parent, on the one hand, and the benefit to the child from the noncustodial parent's exercise of his or her right to maintain a close association and frequent contact with the child, on the other.<sup>3</sup> Similarly, it has been said that when a parent claims that denial of the parent's request to relocate the child would violate the parent's federal constitutional right to travel, the child's interests are powerful countervailing considerations that cannot be swept aside as irrelevant, and the court should also balance

the nonrelocating parent's federal constitutional interest in parenting.<sup>4</sup> Thus, the best interests of the child may override the right to travel.<sup>5</sup> More specifically, if a judicial decision to restrain the custodial parent from relocating is based upon legitimate, case-specific reasons and evidence pertaining to the best interests of the child, the State's interference with the custodial parent's fundamental right of interstate travel may be justified in furtherance of the best interests of the child.<sup>6</sup> In the absence of such reasons, however, there is no compelling state interest justifying a court in ordering a custodial parent to live in a state other than the one he or she chooses, and the order is an infringement of the parent's right of interstate travel.<sup>7</sup>

Other courts have held that a limitation on a custodial parent's ability to change the child's residence to another state,<sup>8</sup> such as a court order effectively requiring a custodial parent who has moved from a state to return to the state or relinquish custody,<sup>9</sup> does not impermissibly infringe upon the custodial parent's right to travel and that a court may premise the grant of primary custody to one parent on the other parent's desire to relocate with the child to another state.<sup>10</sup> A statute authorizing a court prohibition against a custodial parent's moving out of state with the child has been held not to violate the custodial parent's right of interstate travel.<sup>11</sup>

A noncustodial parent may be limited to in-state visitation of his or her children without violating the parent's constitutional right to travel.<sup>12</sup> Similar restrictions may validly form part of a joint custody plan.<sup>13</sup> However, a mother's exercise of her constitutional right to travel within a state has been held an insufficient ground for a postdivorce order modifying a joint parenting plan under which the mother was the primary custodian and the father had visitation, to make the father the primary custodial parent of the children.<sup>14</sup>

### ***Travel abroad.***

A former spouse does not have a fundamental right to travel abroad with his or her children, for purposes of the other spouse's request for placement of travel and passport restrictions in a parenting plan; rather, the fundamental right to travel extends only to interstate travel.<sup>15</sup>

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### **Footnotes**

- 1 Wyo.—*Hanson v. Belveal*, 2012 WY 98, 280 P.3d 1186 (Wyo. 2012).
- 2 N.M.—*Jaramillo v. Jaramillo*, 1991-NMSC-101, 113 N.M. 57, 823 P.2d 299 (1991).
- 3 Md.—*Braun v. Headley*, 131 Md. App. 588, 750 A.2d 624 (2000).
- 4 Ind.—*Baxendale v. Raich*, 878 N.E.2d 1252 (Ind. 2008).
- 5 Or.—*In re Marriage of Fedorov*, 228 Or. App. 50, 206 P.3d 1124 (2009).
- 6 R.I.—*Africano v. Castelli*, 837 A.2d 721 (R.I. 2003).
- 7 W. Va.—*Rowsey v. Rowsey*, 174 W. Va. 692, 329 S.E.2d 57 (1985).
- 8 Mont.—*Matter of Custody of D.M.G.*, 1998 MT 1, 287 Mont. 120, 951 P.2d 1377 (1998).
- 9 Iowa—*Wohlert v. Toal*, 670 N.W.2d 432 (Iowa Ct. App. 2003).
- 10 Mont.—*Matter of Custody of D.M.G.*, 1998 MT 1, 287 Mont. 120, 951 P.2d 1377 (1998).
- 11 Idaho—*Weiland v. Ruppel*, 139 Idaho 122, 75 P.3d 176 (2003).
- 12 N.D.—*McRae v. Carbno*, 404 N.W.2d 508 (N.D. 1987) (holding modified on other grounds by, *Stout v. Stout*, 1997 ND 61, 560 N.W.2d 903 (N.D. 1997)).
- 13 Ind.—*Clark v. Atkins*, 489 N.E.2d 90 (Ind. Ct. App. 1986).
- 14 Minn.—*LaChapelle v. Mitten*, 607 N.W.2d 151 (Minn. Ct. App. 2000).
- 15 N.M.—*Alfieri v. Alfieri*, 105 N.M. 373, 1987-NMCA-003, 733 P.2d 4 (Ct. App. 1987).
- 16 Tex.—*In re C.R.O.*, 96 S.W.3d 442 (Tex. App. Amarillo 2002).

- 10 Conn.—*Azia v. DiLascia*, 64 Conn. App. 540, 780 A.2d 992 (2001).  
11 N.J.—*Murnane v. Murnane*, 229 N.J. Super. 520, 552 A.2d 194 (App. Div. 1989).  
12 Wis.—*In re Custody of L.J.G.*, 141 Wis. 2d 503, 415 N.W.2d 564 (Ct. App. 1987).  
Wyo.—*Trudeau v. Trudeau*, 822 P.2d 873 (Wyo. 1991).  
13 Mo.—*In re C.H.*, 412 S.W.3d 375 (Mo. Ct. App. E.D. 2013), reh'g and/or transfer denied, (Oct. 10, 2013)  
and transfer denied, (Nov. 26, 2013).  
14 Mt.—*In re Marriage of Guffin*, 2009 MT 169, 350 Mont. 489, 209 P.3d 225 (2009).  
15 Wash.—*Katare v. Katare*, 175 Wash. 2d 23, 283 P.3d 546 (2012), cert. denied, 133 S. Ct. 889, 184 L. Ed.  
2d 661 (2013).

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## 16A C.J.S. Constitutional Law § 796

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### Constitutional Law

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### PART III. Overview of Protected Personal Rights and Freedoms; Police Power

#### IX. Personal, Civil, and Political Rights and Freedoms

##### C. Personal Liberty

##### 3. Right to Travel

##### b. Particular Applications

## § 796. Relating to driving

[Topic Summary](#) | [References](#) | [Correlation Table](#)

### West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#)  1280 to 1282, 1285 to 1288

### The right to drive, as opposed to the right to travel, is not a fundamental constitutional right.

In contrast to the right to travel, the right to drive is not a fundamental constitutional right<sup>1</sup> but a privilege.<sup>2</sup> Whenever an individual chooses to drive an automobile in a state, he or she surrenders his or her individual liberties to the extent necessary for compliance with relevant traffic statutes and ordinances that are necessary for the general welfare of the public.<sup>3</sup> Revocation of the privilege to operate a motor vehicle on public roadways may properly be based on noncompliance with statutory law, and revocation is not an infringement on the revokee's right to travel.<sup>4</sup>

A state's enforcement of valid traffic laws does not violate motorists' constitutional right to travel,<sup>5</sup> as a state legislature has constitutional police power to ensure safe drivers and safe roads.<sup>6</sup> The constitutional right to travel through a state is not a right to travel in any manner one wants, free of state regulation, and it does not give travelers the right to ignore the state's traffic laws at their discretion.<sup>7</sup>

Statutes imposing certain insurance requirements,<sup>8</sup> requiring that vehicles be registered<sup>9</sup> and inspected,<sup>10</sup> imposing gasoline taxes<sup>11</sup> and transit tolls,<sup>12</sup> requiring motorcyclists to wear protective headgear,<sup>13</sup> prohibiting motor vehicle operators from wearing headphones while driving,<sup>14</sup> requiring that drivers have valid operators' licenses,<sup>15</sup> denying a driver's license for a valid reason,<sup>16</sup> imposing speed limits,<sup>17</sup> and providing for the revocation or suspension of driving privileges for violations of traffic laws<sup>18</sup> or nonpayment of civil judgments arising out of an automobile accident<sup>19</sup> have been upheld against challenges that they violate the right to travel. A government's operation of a toll road likewise does not violate the right to travel.<sup>20</sup>

Some "cruising" ordinances, prohibiting repetitive driving in certain areas between certain hours, have been upheld<sup>21</sup> while others have been struck down as violative of the right to travel.<sup>22</sup>

Other official acts, such as the imposition of a restrictive road block,<sup>23</sup> have been held to violate the right to travel freely on public highways.

## CUMULATIVE SUPPLEMENT

### Cases:

State law requiring each motor vehicle driver to hold a valid driver's license is not facially unconstitutional restriction on exercise of purported fundamental right to travel. 29–A M.R.S.A. § 2412–A(1–A)(A, D). *State v. Pelletier*, 2015 ME 129, 125 A.3d 354 (Me. 2015).

## [END OF SUPPLEMENT]

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### Footnotes

- 1 U.S.—*Miller v. Reed*, 176 F.3d 1202, 163 A.L.R. Fed. 739 (9th Cir. 1999).  
 Ariz.—*Knapp v. Miller*, 165 Ariz. 527, 799 P.2d 868 (Ct. App. Div. 1 1990).  
 Fla.—*State v. Wells*, 965 So. 2d 834 (Fla. 4th DCA 2007).  
 Ill.—*Guerrero v. Ryan*, 272 Ill. App. 3d 945, 209 Ill. Dec. 408, 651 N.E.2d 586 (1st Dist. 1995).  
 N.Y.—*Allen v. New York State Dept. of Motor Vehicles*, 45 Misc. 3d 475, 991 N.Y.S.2d 701 (Sup 2014).  
 Wis.—*State v. Wintlend*, 2002 WI App 314, 258 Wis. 2d 875, 655 N.W.2d 745 (Ct. App. 2002).
- 2 Fla.—*State v. Wells*, 965 So. 2d 834 (Fla. 4th DCA 2007).  
 Wis.—*Brandmiller v. Arreola*, 189 Wis. 2d 215, 525 N.W.2d 353 (Ct. App. 1994), decision aff'd, 199 Wis. 2d 528, 544 N.W.2d 894 (1996).
- 3 Wis.—*Brandmiller v. Arreola*, 189 Wis. 2d 215, 525 N.W.2d 353 (Ct. App. 1994), decision aff'd, 199 Wis. 2d 528, 544 N.W.2d 894 (1996).
- 4 Mont.—*State v. Skurdal*, 235 Mont. 291, 767 P.2d 304 (1988).  
 Tex.—*Carter v. State*, 702 S.W.2d 774 (Tex. App. Fort Worth 1986), petition for discretionary review refused, (Sept. 17, 1986).
- 5 **Even if officer focuses on out-of-state license plates**  
 U.S.—*U.S. v. Hare*, 308 F. Supp. 2d 955 (D. Neb. 2004).
- 6 N.D.—*City of Bismarck v. Stuart*, 546 N.W.2d 366 (N.D. 1996).  
 As to the exercise of the police power in the context of constitutional liberty interests, see § 782.  
 As to the police power, generally, see §§ 699 to 720.
- 7 U.S.—*U.S. v. Hare*, 308 F. Supp. 2d 955 (D. Neb. 2004).

- 8 Cal.—*Quackenbush v. Superior Court* (Congress of California Seniors), 60 Cal. App. 4th 454, 70 Cal. Rptr. 2d 271 (1st Dist. 1997), as modified on denial of reh'g, (Jan. 23, 1998).  
Idaho—*Gordon v. State*, 108 Idaho 178, 697 P.2d 1192 (Ct. App. 1985).  
Minn.—*State v. Cuypers*, 559 N.W.2d 435 (Minn. Ct. App. 1997).
- 9 U.S.—*Kaltenbach v. Breaux*, 690 F. Supp. 1551 (W.D. La. 1988) (Louisiana law).  
Cal.—*Halajian v. D & B Towing*, 209 Cal. App. 4th 1, 146 Cal. Rptr. 3d 646 (5th Dist. 2012).  
N.C.—*State v. Sullivan*, 209 N.C. App. 756, 710 S.E.2d 709 (2011).  
Ohio—*Village of St. Paris v. Galluzzo*, 2014-Ohio-3260, 2014 WL 3731846 (Ohio Ct. App. 2d Dist. Champaign County 2014).
- 10 U.S.—*Kaltenbach v. Breaux*, 690 F. Supp. 1551 (W.D. La. 1988) (Louisiana law).
- 11 U.S.—*Miller v. Reed*, 176 F.3d 1202, 163 A.L.R. Fed. 739 (9th Cir. 1999).
- 12 U.S.—*Angus Partners LLC v. Walder*, 2014 WL 4639552 (S.D. N.Y. 2014).
- 13 Colo.—*Love v. Bell*, 171 Colo. 27, 465 P.2d 118 (1970).  
Me.—*State v. Quinnam*, 367 A.2d 1032 (Me. 1977).
- 14 Ohio—*State v. Varsel*, 2014-Ohio-1899, 11 N.E.3d 327 (Ohio Ct. App. 6th Dist. Fulton County 2014).
- 15 U.S.—*Merring v. Bozym*, 2008 WL 5378280 (M.D. Pa. 2008).  
Cal.—*Halajian v. D & B Towing*, 209 Cal. App. 4th 1, 146 Cal. Rptr. 3d 646 (5th Dist. 2012).  
Idaho—*Gordon v. State*, 108 Idaho 178, 697 P.2d 1192 (Ct. App. 1985).  
Kan.—*State v. Hershberger*, 27 Kan. App. 2d 485, 5 P.3d 1004 (2000).  
N.D.—*City of Bismarck v. Stuart*, 546 N.W.2d 366 (N.D. 1996).  
Utah—*Farmington City v. Lake*, 2013 UT App 144, 304 P.3d 881 (Utah Ct. App. 2013).  
Wash.—*State v. Clifford*, 57 Wash. App. 127, 787 P.2d 571 (Div. 3 1990).
- 16 U.S.—*Miller v. Reed*, 176 F.3d 1202, 163 A.L.R. Fed. 739 (9th Cir. 1999).  
Idaho—*State v. Wilder*, 138 Idaho 644, 67 P.3d 839 (Ct. App. 2003).
- 17 Tex.—*Barcroft v. State*, 881 S.W.2d 838, 24 U.C.C. Rep. Serv. 2d 1071 (Tex. App. Tyler 1994).
- 18 Colo.—*Heninger v. Charnes*, 200 Colo. 194, 613 P.2d 884 (1980).  
N.Y.—*Hauptman v. New York State Dept. of Motor Vehicles*, 158 A.D.2d 600, 551 N.Y.S.2d 572 (2d Dep't 1990).  
Vt.—*Boutin v. Conway*, 153 Vt. 558, 572 A.2d 905 (1990).
- 19 U.S.—*Ross v. Gunaris*, 395 F. Supp. 623 (D. Mass. 1975); *Shultz v. Heyison*, 439 F. Supp. 857 (M.D. Pa. 1975).
- 20 U.S.—*Miller v. Reed*, 176 F.3d 1202, 163 A.L.R. Fed. 739 (9th Cir. 1999).
- 21 U.S.—*Lutz v. City of York, Pa.*, 692 F. Supp. 457 (M.D. Pa. 1988), *aff'd* on other grounds, 899 F.2d 255, 87 A.L.R.4th 1081 (3d Cir. 1990).  
Wis.—*Brandmiller v. Arreola*, 189 Wis. 2d 215, 525 N.W.2d 353 (Ct. App. 1994), *decision aff'd*, 199 Wis. 2d 528, 544 N.W.2d 894 (1996).
- 22 Minn.—*State v. Stallman*, 519 N.W.2d 903 (Minn. Ct. App. 1994).
- 23 N.J.—*State v. Barcia*, 228 N.J. Super. 267, 549 A.2d 491 (Law Div. 1988), *order aff'd*, 235 N.J. Super. 311, 562 A.2d 246 (App. Div. 1989).

## 16A C.J.S. Constitutional Law § 797

Corpus Juris Secundum | June 2021 Update

### Constitutional Law

Francis C. Amendola, J.D.; Joseph Bassano, J.D.; John Bourdeau, J.D.; M. Elaine Buccieri, J.D.; James Buchwalter, J.D.; Michael N. Giuliano, J.D.; Lonnie E. Griffith, Jr., J.D.; Eleanor L. Grossman, J.D., of the staff of the National Legal Research Group, Inc.; Jill Gustafson, J.D.; Glenda K. Harnad, J.D.; Alan J. Jacobs, J.D.; John Kimpflen, J.D.; Amy L. Kruse, J.D.; Stephen Lease, J.D.; Sonja Larsen, J.D.; Robert B. McKinney, J.D., of the staff of the National Legal Research Group, Inc.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; Thomas Muskus, J.D.; Sally J.T. Necheles, J.D., LL.M.; Karl Oakes, J.D. and Eric C. Surette, J.D.

### PART III. Overview of Protected Personal Rights and Freedoms; Police Power

#### IX. Personal, Civil, and Political Rights and Freedoms

##### C. Personal Liberty

##### 3. Right to Travel

##### b. Particular Applications

## § 797. Other applications of rule

[Topic Summary](#) | [References](#) | [Correlation Table](#)

### West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#)  1280 to 1282, 1285 to 1288

**Various particular statutes, regulations, or official acts have been ruled upon with respect to whether they violate the right to travel.**

Various particular statutes, regulations, or official acts have been considered not to be violative of the right to travel,<sup>1</sup> such as statutes restricting a tax exemption to a class of veterans who were legal residents of the state at the time of their entry into, or discharge from, military service,<sup>2</sup> granting pension credits,<sup>3</sup> curtailing loitering and prowling,<sup>4</sup> and requiring sex offenders to register with the state,<sup>5</sup> or prohibiting them from living within a prescribed distance of a school.<sup>6</sup>

A statute granting cost-of-living increases to workers' compensation beneficiaries who continued to reside in the state but denying such increases to beneficiaries who are outside the state does not unconstitutionally infringe the right to travel.<sup>7</sup> However, a statute adjusting benefits of workers' compensation recipients who move out of state based on the average weekly

wage of the state to which recipient moves imposes a substantial penalty upon the recipients' exercise of their right to travel out of state and is invalid.<sup>8</sup>

As a statute requiring an executor to be a resident of the state violates the right to travel and to set up one's residence.<sup>9</sup>

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## Footnotes

- 1 **Restrictions on skydiving**  
U.S.—*Skydiving Center of Greater Washington, D.C., Inc. v. St. Mary's County Airport Com'n*, 823 F. Supp. 1273 (D. Md. 1993).
- Stalking statute**  
Wis.—*State v. Ruesch*, 214 Wis. 2d 548, 571 N.W.2d 898 (Ct. App. 1997).
- Compelling interest shown**  
A justification for using length of residence in the state as a factor in evaluating applications for admission to a state university medical school, that it served as a proxy for selecting those candidates likely to return to the state and supply needed medical care to underserved areas of the state, was not only legitimate but also compelling, for purposes of resolving a challenge to the admissions policy as violating the right to travel.  
U.S.—*Buchwald v. University of New Mexico School of Medicine*, 159 F.3d 487, 130 Ed. Law Rep. 428 (10th Cir. 1998).
- 2 Me.—*Lambert v. Wentworth*, 423 A.2d 527 (Me. 1980).
- Residency requirement to qualify for partial real estate tax exemption**  
Mass.—*Sylvester v. Commissioner Of Revenue*, 445 Mass. 304, 837 N.E.2d 662 (2005).
- 3 N.Y.—*Devereaux v. New York State Teachers' Retirement Bd.*, 75 A.D.2d 277, 429 N.Y.S.2d 743 (3d Dep't 1980).
- 4 Idaho—*State v. Bitt*, 118 Idaho 584, 798 P.2d 43 (1990).
- 5 Or.—*State v. Wigglesworth*, 186 Or. App. 374, 63 P.3d 1185 (2003).  
Tex.—*Ex parte Robinson*, 80 S.W.3d 709 (Tex. App. Houston 1st Dist. 2002), petition for discretionary review granted, (Nov. 20, 2002) and judgment aff'd, 116 S.W.3d 794 (Tex. Crim. App. 2003).
- 6 Iowa—*State v. Willard*, 756 N.W.2d 207 (Iowa 2008).
- 7 U.S.—*Fisher v. Reiser*, 610 F.2d 629 (9th Cir. 1979).
- 8 Alaska—*Alaska Pacific Assur. Co. v. Brown*, 687 P.2d 264 (Alaska 1984).
- 9 N.Y.—*In re Harrison's Estate*, 81 Misc. 2d 807, 366 N.Y.S.2d 755 (Sur. Ct. 1974).

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## 16A C.J.S. Constitutional Law § 798

Corpus Juris Secundum | June 2021 Update

### Constitutional Law

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### PART III. Overview of Protected Personal Rights and Freedoms; Police Power

#### IX. Personal, Civil, and Political Rights and Freedoms

##### C. Personal Liberty

##### 4. Involuntary Servitude

##### a. In General

## § 798. Involuntary servitude, generally

[Topic Summary](#) | [References](#) | [Correlation Table](#)

### West's Key Number Digest

West's Key Number Digest, [Human Trafficking and Slavery](#)  3, 4, 5(1), 13, 14, 15(1) to 15(4), 15(9), 152

### Subject to some exceptions, involuntary servitude has been abolished.

Under the Thirteenth Amendment to the Constitution of the United States, which provides that "neither slavery or involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction,"<sup>1</sup> involuntary servitude, except as a punishment for crime, is abolished.<sup>2</sup> Similar provisions exist in some state constitutions.<sup>3</sup> The Amendment not only prohibits governmental action supporting slavery or involuntary servitude but also is an absolute declaration that slavery or involuntary servitude shall not exist in any part of the United States.<sup>4</sup> Accordingly, there is no rule of law under which any person in this country will be forced to serve with his or her labor any other person whom he or she does not wish to serve.<sup>5</sup>

As used in the Amendment, "involuntary servitude" is the condition of one who is compelled by force, coercion, or imprisonment and against his or her will to labor for another whether or not he or she is paid<sup>6</sup> and includes peonage.<sup>7</sup> A person is held to

involuntary servitude when the servant believes that he or she has no viable alternative but to perform service for the master<sup>8</sup> because of the master's use or threatened use of physical force, the use or threatened use of state-imposed legal coercion,<sup>9</sup> or the use of fraud or deceit to obtain or maintain services where the servant is a minor, an immigrant, or one who is mentally incompetent.<sup>10</sup> Thus, a showing of compulsion is a prerequisite to proof of involuntary servitude.<sup>11</sup> For instance, the State may not compel an individual to labor against his or her will as part of the remedy of specific performance.<sup>12</sup> However, subtle or indirect pressure to work does not render the work involuntary.<sup>13</sup>

A person may not claim to be subjected to involuntary servitude as long as he or she is free to leave his or her employment,<sup>14</sup> even if this will result in some diminution of economic earning power,<sup>15</sup> and even if the choice is a painful or unattractive one<sup>16</sup> or will bear bad consequences.<sup>17</sup>

While the leading purpose of the Thirteenth Amendment was to abolish slavery in the United States,<sup>18</sup> and that was its primary effect,<sup>19</sup> the Amendment is not limited to the abolition of slavery but embraces, in addition, other forms of compulsory labor, akin to slavery, which tend to produce similar undesirable consequences.<sup>20</sup> Congressional legislation effectuating the Thirteenth Amendment's express prohibitions of slavery and involuntary servitude applies to all groups and not just to racial minorities.<sup>21</sup>

#### ***Territorial limits.***

The Thirteenth Amendment does not directly reach slavery or involuntary servitude outside the territorial jurisdiction of the United States.<sup>22</sup>

### **CUMULATIVE SUPPLEMENT**

#### **Cases:**

The thirteenth amendment relates only to slavery and involuntary servitude (which it abolishes); and although it establishes freedom to the United States, and Congress may probably pass laws directly enforcing its provisions, yet, such legislative power extends only to the subject of slavery and its incidents; and the denial of equal accommodations in inns, public conveyances, and places of public amusement, forbidden by Act Cong. March 1, 1875, 18 Stat. 335, imposes no badge of slavery or involuntary servitude upon the party, but, at most, infringes rights which are protected from state aggression by the fourteenth amendment, U.S.C.A. *Civil Rights Cases*, 109 U.S. 3, 3 S. Ct. 18, 27 L. Ed. 835 (1883).

Discharged African-American school bus driver failed to state § 1983 claim under Thirteenth Amendment against her former employer, a private bus company, and her union arising from her termination, absent allegations suggesting that employee was forced into labor. U.S.C.A. Const. Amend. 13; 42 U.S.C.A. § 1983. *Carris v. First Student, Inc.*, 132 F. Supp. 3d 321, 328 Ed. Law Rep. 647 (N.D. N.Y. 2015).

### **[END OF SUPPLEMENT]**

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#### Footnotes

- 1 U.S. Const. Amend. XIII.
- 2 U.S.—*Heflin v. Sanford*, 142 F.2d 798 (C.C.A. 5th Cir. 1944).

**A.L.R. Library**

Application of Section 1 of 13th Amendment to United States Constitution, U.S. Const. Amend. XIII, s1, Prohibiting Slavery and Involuntary Servitude—Labor Required by Law or Force Not as Punishment for Crime, 88 A.L.R.6th 203.

Cal.—*Moss v. Superior Court (Ortiz)*, 17 Cal. 4th 396, 71 Cal. Rptr. 2d 215, 950 P.2d 59 (1998).

Colo.—*In re Marriage of Franks*, 189 Colo. 499, 542 P.2d 845 (1975).

Ind.—*Bayh v. Sonnenburg*, 573 N.E.2d 398 (Ind. 1991).

La.—*Rochon v. Blackburn*, 727 So. 2d 602 (La. Ct. App. 1st Cir. 1998).

Mich.—*Blair v. Checker Cab Co.*, 219 Mich. App. 667, 558 N.W.2d 439 (1996).

U.S.—*City of Memphis v. Greene*, 451 U.S. 100, 101 S. Ct. 1584, 67 L. Ed. 2d 769 (1981).

**Extends to purely private action**

U.S.—*U.S. v. Nelson*, 277 F.3d 164 (2d Cir. 2002); *U.S. v. Bledsoe*, 728 F.2d 1094, 76 A.L.R. Fed. 807 (8th Cir. 1984); *Humpherys v. Nager*, 962 F. Supp. 347 (E.D. N.Y. 1997).

Fla.—*Henderson v. Coleman*, 150 Fla. 185, 7 So. 2d 117 (1942).

Utah—*McGrew v. Industrial Commission*, 96 Utah 203, 85 P.2d 608 (1938).

**Animals not "persons" within meaning of Thirteenth Amendment**

Fla.—*Wilson v. Sandstrom*, 317 So. 2d 732 (Fla. 1975).

U.S.—*U.S. v. Kozminski*, 487 U.S. 931, 108 S. Ct. 2751, 101 L. Ed. 2d 788 (1988); *Valmonte v. I.N.S.*, 136 F.3d 914 (2d Cir. 1998); *Boyle v. City of Liberty, Mo.*, 833 F. Supp. 1436 (W.D. Mo. 1993).

La.—*Callaghan v. Department of Fire*, 385 So. 2d 25 (La. Ct. App. 4th Cir. 1980).

N.Y.—*Central School Dist. No. 2 of Town of Oyster Bay, Nassau County v. Cohen*, 60 Misc. 2d 337, 302 N.Y.S.2d 398 (Dist. Ct. 1969).

**Compensation as immaterial**

It is involuntary servitude, not uncompensated service, which is prohibited by the Thirteenth Amendment; and while compensation for service may cause consent, unless it does, it is no justification for forced labor.

U.S.—*Heflin v. Sanford*, 142 F.2d 798 (C.C.A. 5th Cir. 1944).

**Elements**

Involuntary servitude usually includes both elements of physical restraint and complete psychological domination.

U.S.—*Turner v. Unification Church*, 473 F. Supp. 367 (D.R.I. 1978), judgment aff'd, 602 F.2d 458 (1st Cir. 1979).

U.S.—*Taylor v. State of Ga.*, 315 U.S. 25, 62 S. Ct. 415, 86 L. Ed. 615 (1942); *Baldauf v. Nitze*, 261 F. Supp. 167 (S.D. Cal. 1966); *In re Markman*, 5 B.R. 196 (Bankr. E.D. N.Y. 1980).

**Coercion to work off debt**

Thirteenth Amendment prohibits conditions in which a victim is coerced by a threat of legal sanction to work off a debt to a master.

U.S.—*Alkire v. Irving*, 330 F.3d 802, 55 Fed. R. Serv. 3d 1023, 2003 FED App. 0165A (6th Cir. 2003).

U.S.—*Watson v. Graves*, 909 F.2d 1549, 110 A.L.R. Fed. 823 (5th Cir. 1990).

Mich.—*Blair v. Checker Cab Co.*, 219 Mich. App. 667, 558 N.W.2d 439 (1996).

U.S.—*U.S. v. King*, 840 F.2d 1276 (6th Cir. 1988).

Neb.—*Abbott v. Gould, Inc.*, 232 Neb. 907, 443 N.W.2d 591 (1989).

**Physical coercion or legal sanction**

U.S.—*In re Gordon*, 465 B.R. 683 (Bankr. N.D. Ga. 2012).

U.S.—*U.S. v. King*, 840 F.2d 1276 (6th Cir. 1988).

U.S.—*Brooks v. George County, Miss.*, 84 F.3d 157 (5th Cir. 1996); *Family Div. Trial Lawyers of Superior Court-D.C., Inc. v. Moultrie*, 725 F.2d 695 (D.C. Cir. 1984).

Cal.—*Woolley v. Embassy Suites, Inc.*, 227 Cal. App. 3d 1520, 278 Cal. Rptr. 719 (1st Dist. 1991).

Wis.—*State v. Brownson*, 157 Wis. 2d 404, 459 N.W.2d 877 (Ct. App. 1990).

U.S.—*Herndon by Herndon v. Chapel Hill-Carrboro City Bd. of Educ.*, 89 F.3d 174, 110 Ed. Law Rep. 1037 (4th Cir. 1996).

U.S.—*Boyle v. City of Liberty, Mo.*, 833 F. Supp. 1436 (W.D. Mo. 1993); *Sanders v. Prentice-Hall Corp. System, Inc.*, 969 F. Supp. 481 (W.D. Tenn. 1997), aff'd, 178 F.3d 1296 (6th Cir. 1999).

Cal.—*Moss v. Superior Court (Ortiz)*, 17 Cal. 4th 396, 71 Cal. Rptr. 2d 215, 950 P.2d 59 (1998).

N.Y.—*Emery v. Le Fevre*, 97 A.D.2d 931, 470 N.Y.S.2d 772 (3d Dep't 1983).

**Baseball reserve system**

Inasmuch as plaintiff retained option not to play professional baseball at all, fact that by playing baseball he was subject to reserve system restricting him to contract negotiations with that club which first employed or reserved him or with club to which he had been "sold" or "traded" did not violate Thirteenth Amendment prohibition against involuntary servitude.

U.S.—*Flood v. Kuhn*, 443 F.2d 264 (2d Cir. 1971), judgment aff'd, 407 U.S. 258, 92 S. Ct. 2099, 32 L. Ed. 2d 728 (1972).

15 Fla.—*In re Amendments to Rules Regulating The Florida Bar- 1-3.1(a) and Rules of Judicial Admin.- 2.065 (Legal Aid)*, 573 So. 2d 800 (Fla. 1990).

16 U.S.—*Brooks v. George County, Miss.*, 84 F.3d 157 (5th Cir. 1996).

Mich.—*Blair v. Checker Cab Co.*, 219 Mich. App. 667, 558 N.W.2d 439 (1996).

17 U.S.—*Immediato v. Rye Neck School Dist.*, 73 F.3d 454, 106 Ed. Law Rep. 85 (2d Cir. 1996).

18 U.S.—*Pollock v. Williams*, 322 U.S. 4, 64 S. Ct. 792, 88 L. Ed. 1095 (1944); *McGarry v. Pallito*, 687 F.3d 505, 87 A.L.R.6th 713 (2d Cir. 2012); *Boyle v. City of Liberty, Mo.*, 833 F. Supp. 1436 (W.D. Mo. 1993).  
Ill.—*City of Chicago v. Kunowski*, 308 Ill. 206, 139 N.E. 28 (1923).

Md.—*Scott v. Comptroller of Treasury*, 105 Md. App. 215, 659 A.2d 341 (1995).

Wis.—*City of Milwaukee v. Horvath*, 31 Wis. 2d 490, 143 N.W.2d 446 (1966).

19 U.S.—*Jones v. Alfred H. Mayer Co.*, 392 U.S. 409, 88 S. Ct. 2186, 20 L. Ed. 2d 1189 (1968).

20 U.S.—*Immediato v. Rye Neck School Dist.*, 73 F.3d 454, 106 Ed. Law Rep. 85 (2d Cir. 1996); *U.S. v. Booker*, 655 F.2d 562 (4th Cir. 1981); *Channer v. Hall*, 112 F.3d 214 (5th Cir. 1997); *Muhmmaud v. Murphy*, 632 F. Supp. 2d 171 (D. Conn. 2009); *Jones v. City School Dist. of New Rochelle*, 695 F. Supp. 2d 136, 257 Ed. Law Rep. 646 (S.D. N.Y. 2010); *Minor v. Tyson Foods, Inc.*, 2014 WL 5018859 (W.D. Va. 2014).

Mo.—*City of St. Louis v. Liberman*, 547 S.W.2d 452 (Mo. 1977).

Wis.—*City of Milwaukee v. Horvath*, 31 Wis. 2d 490, 143 N.W.2d 446 (1966).

**All forms of involuntary labor**

U.S.—*McGarry v. Pallito*, 687 F.3d 505, 87 A.L.R.6th 713 (2d Cir. 2012).

21 U.S.—*Baer v. Baer*, 450 F. Supp. 481 (N.D. Cal. 1978).

**Indian tribes**

U.S.—*Vann v. Kempthorne*, 534 F.3d 741 (D.C. Cir. 2008).

**Whites**

U.S.—*Hollander v. Sears, Roebuck & Co.*, 392 F. Supp. 90 (D. Conn. 1975).

22 U.S.—*John Roe I v. Bridgestone Corp.*, 492 F. Supp. 2d 988 (S.D. Ind. 2007).

## 16A C.J.S. Constitutional Law § 799

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### Constitutional Law

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### PART III. Overview of Protected Personal Rights and Freedoms; Police Power

#### IX. Personal, Civil, and Political Rights and Freedoms

##### C. Personal Liberty

##### 4. Involuntary Servitude

##### a. In General

## § 799. Necessity of implementing legislation

[Topic Summary](#) | [References](#) | [Correlation Table](#)

### West's Key Number Digest

West's Key Number Digest, [Human Trafficking and Slavery](#)  3, 4, 5(1), 13, 14, 15(1) to 15(4), 15(9), 152

**The Thirteenth Amendment is self-executing as it applies to the abolition of slavery and involuntary servitude.**

The Thirteenth Amendment is self-executing as it applies to abolishing slavery and involuntary servitude,<sup>1</sup> and all statutes, ordinances, and official actions which violate the constitutional prohibition against involuntary servitude are unconstitutional and void.<sup>2</sup> An independent cause of action will lie directly under the Thirteenth Amendment when a plaintiff attacks slavery itself or other forms of compulsory labor akin to slavery.<sup>3</sup> However, implementing statutes, such as the Anti-Peonage Act,<sup>4</sup> a statute prohibiting interference with any person, because of his or her race, in that person's use of any facility provided or administered by a state,<sup>5</sup> and statutes prohibiting violence motivated by the victim's race, religion, or other discriminatory reason,<sup>6</sup> have been enacted.

Although it has been held that a plaintiff could not maintain a cause of action against a private corporation directly under the Thirteenth Amendment,<sup>7</sup> it has also been held that the Thirteenth Amendment, in and of itself, reaches purely private conduct.<sup>8</sup>

Congress has the power to enact laws operating upon the acts of private individuals, whether sanctioned by state legislation or not.<sup>9</sup>

***States' rights under Tenth Amendment.***

A federal criminal statute prohibiting the willful causing of bodily injury to another because of his or her actual or perceived race, color, or national origin does not impermissibly encroach on state authority, and thus, does not violate the Tenth Amendment, as the Thirteenth Amendment expressly delegated to Congress the power to eliminate the badges and incidents of slavery, so that the states do not have any reserved exclusive power to regulate racially motivated violence.<sup>10</sup>

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Footnotes

- 1 U.S.—U.S. v. Shackney, 333 F.2d 475 (2d Cir. 1964); Jordan v. Lewis Grocer Co., 467 F. Supp. 113 (N.D. Miss. 1979).
- 2 Ohio—General Elec. Co. v. International Union United Auto., Aircraft and Agr. Implement Workers of America (U.A.W.-C.I.O.), 93 Ohio App. 139, 50 Ohio Op. 399, 64 Ohio L. Abs. 231, 108 N.E.2d 211 (1st Dist. Hamilton County 1952).
- 3 Ind.—Bayh v. Sonnenburg, 573 N.E.2d 398 (Ind. 1991).
- 4 Tex.—Matter of S.C., 790 S.W.2d 766 (Tex. App. Austin 1990), writ denied, (Nov. 7, 1990), referring to 42 U.S.C.A. § 1994.  
Peonage is defined and discussed in C.J.S., Peonage §§ 1 to 5.
- 5 **18 U.S.C.A. § 245**  
U.S.—U.S. v. Sandstrom, 594 F.3d 634 (8th Cir. 2010).
- 6 U.S.—U.S. v. Nelson, 277 F.3d 164 (2d Cir. 2002); U.S. v. Allen, 341 F.3d 870 (9th Cir. 2003).
- 7 U.S.—Roberts v. Walmart Stores, Inc., 736 F. Supp. 1527 (E.D. Mo. 1990).
- 8 U.S.—U.S. v. Nelson, 277 F.3d 164 (2d Cir. 2002).
- 9 U.S.—Runyon v. McCrary, 427 U.S. 160, 96 S. Ct. 2586, 49 L. Ed. 2d 415 (1976); Jordan v. Lewis Grocer Co., 467 F. Supp. 113 (N.D. Miss. 1979).  
**Private conduct addressable**  
Varieties of private conduct which Congress may make criminally punishable or civilly remediable, under Thirteenth Amendment, extend beyond actual imposition of slavery or involuntary servitude.  
U.S.—Griffin v. Breckenridge, 403 U.S. 88, 91 S. Ct. 1790, 29 L. Ed. 2d 338 (1971).  
**Private rights of action**  
The Thirteenth Amendment gives power to Congress to create private rights of action against private defendants who deprive individuals of basic rights of free men.  
U.S.—Vietnamese Fishermen's Ass'n v. Knights of Ku Klux Klan, 518 F. Supp. 993 (S.D. Tex. 1981).
- 10 U.S.—U.S. v. Beebe, 807 F. Supp. 2d 1045 (D.N.M. 2011), aff'd, 722 F.3d 1193 (10th Cir. 2013), cert. denied, 134 S. Ct. 1538, 188 L. Ed. 2d 561 (2014).

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## 16A C.J.S. Constitutional Law § 800

Corpus Juris Secundum | June 2021 Update

### Constitutional Law

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### PART III. Overview of Protected Personal Rights and Freedoms; Police Power

#### IX. Personal, Civil, and Political Rights and Freedoms

##### C. Personal Liberty

##### 4. Involuntary Servitude

##### a. In General

## § 800. Necessity of implementing legislation—"Badges and incidents" of slavery

[Topic Summary](#) | [References](#) | [Correlation Table](#)

### West's Key Number Digest

West's Key Number Digest, [Human Trafficking and Slavery](#)  3, 4, 5(1), 13, 14, 15(1) to 15(4), 15(9), 152

**The badges and incidents of slavery may be abolished only through implementing legislation under the Thirteenth Amendment's enabling clause.**

The purpose of the Thirteenth Amendment was not merely to abolish the physical cruelties of slavery but also to eradicate the badges and incidents of slavery.<sup>1</sup> Although the provisions of the Amendment, standing alone, have not been held to reach the badges and incidents of slavery,<sup>2</sup> under the Amendment's enabling clause, Congress has the power to rationally determine what are badges and incidents of slavery and to abolish them through effective, implementing legislation.<sup>3</sup>

Official action taken with discriminatory intent may constitute a badge or incident of slavery and thus violate the Amendment.<sup>4</sup> However, not every racially discriminatory act constitutes such a badge or incident.<sup>5</sup>

A congressional determination as to what constitutes a badge and incident of slavery is subject to judicial review employing the minimum rationality standard.<sup>6</sup> Once it has been determined that something is a badge or incident of slavery, the standard of review of the means adopted to eliminate it is generally that of appropriateness.<sup>7</sup> However, where the means adopted include a racial classification, a more searching scrutiny is required.<sup>8</sup> Applying these standards, various statutes have been found to be valid exercises of congressional power under the Thirteenth Amendment.<sup>9</sup>

## CUMULATIVE SUPPLEMENT

### Cases:

Under the Thirteenth Amendment to the United States Constitution, Congress has a right to enact all necessary and proper laws for the obliteration and prevention of slavery with all its badges and incidents. [Civil Rights Cases](#), 109 U.S. 3, 3 S. Ct. 18, 27 L. Ed. 835 (1883).

## [END OF SUPPLEMENT]

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### Footnotes

- 1 U.S.—[Jones v. Alfred H. Mayer Co.](#), 392 U.S. 409, 88 S. Ct. 2186, 20 L. Ed. 2d 1189 (1968); [Immediato v. Rye Neck School Dist.](#), 73 F.3d 454, 106 Ed. Law Rep. 85 (2d Cir. 1996); [N.A.A.C.P. v. Hunt](#), 891 F.2d 1555 (11th Cir. 1990); [U.S. v. Finnell](#), 256 F. Supp. 2d 493 (E.D. Va. 2003).
- 2 U.S.—[Palmer v. Thompson](#), 403 U.S. 217, 91 S. Ct. 1940, 29 L. Ed. 2d 438 (1971); [Alma Soc. Inc. v. Mellon](#), 601 F.2d 1225 (2d Cir. 1979).
- 3 U.S.—[Palmer v. Thompson](#), 403 U.S. 217, 91 S. Ct. 1940, 29 L. Ed. 2d 438 (1971); [Robinson v. Town of Colonie](#), 878 F. Supp. 387 (N.D. N.Y. 1995).  
As to civil rights legislation, generally, see [C.J.S., Civil Rights §§ 5 to 18](#).
- 4 **Veto of proposed low-income housing project**  
U.S.—[Atkins v. Robinson](#), 545 F. Supp. 852 (E.D. Va. 1982), judgment aff'd, 733 F.2d 318 (4th Cir. 1984).  
**Denial of right to vote based on one's race**  
U.S.—[Vann v. Kempthorne](#), 467 F. Supp. 2d 56 (D.D.C. 2006), judgment rev'd in part on other grounds, 534 F.3d 741 (D.C. Cir. 2008).  
**Physically attacking person of particular race**  
A provision of the Federal Hate Crimes Act imposing criminal penalties for racially motivated violence fell within the scope of Congress's authority under the Thirteenth Amendment to eliminate badges and incidents of slavery; Congress confined the provision's reach to aspects of race as understood in the 1860s, limited its application to individuals who acted because of the victim's race, and rationally concluded that physically attacking a person of a particular race because of animus toward or desire to assert superiority over that race was a badge or incident of slavery.  
U.S.—[U.S. v. Hatch](#), 722 F.3d 1193 (10th Cir. 2013), cert. denied, 134 S. Ct. 1538, 188 L. Ed. 2d 561 (2014).
- 5 U.S.—[Smalls v. Ives](#), 296 F. Supp. 448 (D. Conn. 1968); [Lopez v. Sears, Roebuck and Co.](#), 493 F. Supp. 801 (D. Md. 1980).  
**Scope of Amendment**  
The Thirteenth Amendment's independent scope is limited to eradication of incidents or badges of slavery and does not reach other acts of discrimination.  
U.S.—[Washington v. Finlay](#), 664 F.2d 913 (4th Cir. 1981).  
**Confederate flag**  
A state's flying of the confederate flag on state property is not a badge or incident of slavery and does not violate the Thirteenth Amendment.

U.S.—[N.A.A.C.P. v. Hunt](#), 891 F.2d 1555 (11th Cir. 1990).

**Slavery reparations**

An African American woman who sued the United States to recover damages for enslavement of her ancestors and discrimination against their descendents lacked standing to assert a claim that the federal government had failed in its obligation to end the vestiges of slavery; plaintiff proceeded on a generalized, class-based grievance, and she neither alleged nor suggested that she might claim any conduct on the part of any specific official or as result of any specific program that ran afoul of the Constitution or a statutory right and caused her discreet injury.

U.S.—[Cato v. U.S.](#), 70 F.3d 1103 (9th Cir. 1995).

6 U.S.—[Rhode Island Chapter, Associated General Contractors of America, Inc. v. Kreps](#), 450 F. Supp. 338 (D.R.I. 1978).

**Willful infliction of injury upon person because of perceived race**

Congress could rationally designate as a badge and incident of slavery the willful infliction of injury upon a person because of that person's perceived race, so that a statute which proscribed such conduct against any person, whether or not the recipient of any public benefit, was not unconstitutional as allegedly being in excess of the authority granted to Congress under the Thirteenth Amendment to determine what were badges and incidents of slavery and abolish them.

U.S.—[U.S. v. Maybee](#), 687 F.3d 1026 (8th Cir. 2012).

**Community tranquility**

For Thirteenth Amendment purposes, a city's stated purpose, i.e., fostering an interest in comparative tranquility, for closing a street which traversed a white residential community and which had been used by residents of a neighboring black community, was a legitimate interest.

U.S.—[City of Memphis v. Greene](#), 451 U.S. 100, 101 S. Ct. 1584, 67 L. Ed. 2d 769 (1981).

7 U.S.—[Rhode Island Chapter, Associated General Contractors of America, Inc. v. Kreps](#), 450 F. Supp. 338 (D.R.I. 1978).

8 U.S.—[Rhode Island Chapter, Associated General Contractors of America, Inc. v. Kreps](#), 450 F. Supp. 338 (D.R.I. 1978).

9 U.S.—[Griffin v. Breckenridge](#), 403 U.S. 88, 91 S. Ct. 1790, 29 L. Ed. 2d 338 (1971).

**Percentage minority business enterprise requirement**

U.S.—[Rhode Island Chapter, Associated General Contractors of America, Inc. v. Kreps](#), 450 F. Supp. 338 (D.R.I. 1978).

**Fair Housing Act**

The Fair Housing Act was designed to provide nationwide fair housing to minorities who had previously been victims of invidious racial discrimination and is a valid exercise of congressional power under the Thirteenth Amendment to eliminate badges and incidents of slavery.

U.S.—[Mitchell v. Cellone](#), 389 F.3d 86 (3d Cir. 2004).

## 16A C.J.S. Constitutional Law § 801

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### Constitutional Law

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##### 4. Involuntary Servitude

##### b. Particular Applications

## § 801. Attorneys and doctors

[Topic Summary](#) | [References](#) | [Correlation Table](#)

### West's Key Number Digest

West's Key Number Digest, [Human Trafficking and Slavery](#)  [3](#), [4](#), [5\(1\)](#), [13](#), [14](#), [15\(1\)](#) to [15\(4\)](#), [15\(9\)](#), [152](#)

**An attorney may be required to represent an indigent defendant in certain proceedings. The state may also require a doctor who has accepted certain scholarship funds to perform pro bono services without violating the Thirteenth Amendment's ban on involuntary servitude.**

An attorney may be required to represent an indigent defendant in a criminal matter for limited or no compensation,<sup>1</sup> or in a child neglect proceeding<sup>2</sup> for limited compensation,<sup>3</sup> or no compensation<sup>4</sup> without violating the prohibition against involuntary servitude, as the requirement is consistent with the attorney's professional obligations in return for membership in the bar.<sup>5</sup> Moreover, requiring an attorney to perform community service as a discovery sanction did not violate the prohibition against involuntary servitude as it was attorney's own conduct that brought about the sanction, not the action of the court.<sup>6</sup>

### *Doctors.*

The state may also require a doctor who has accepted certain scholarship funds to perform pro bono services without violating the Thirteenth Amendment's ban on involuntary servitude.<sup>7</sup>

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## Footnotes

- 1 U.S.—*Powell v. State of Ala.*, 287 U.S. 45, 53 S. Ct. 55, 77 L. Ed. 158, 84 A.L.R. 527 (1932); *U.S. v. De La Cruz*, 870 F.2d 1192 (7th Cir. 1989).  
Fla.—*In re Amendments to Rules Regulating The Florida Bar- 1-3.1(a) and Rules of Judicial Admin.- 2.065 (Legal Aid)*, 573 So. 2d 800 (Fla. 1990).  
Kan.—*Sharp v. State*, 245 Kan. 749, 783 P.2d 343 (1989).  
Mo.—*State ex rel. Public Defender Com'n v. Williamson*, 971 S.W.2d 835 (Mo. Ct. App. W.D. 1998).  
As to assignment of counsel, generally, see *C.J.S., Attorney and Client* §§ 138 to 141 and *C.J.S., Criminal Law* §§ 384 to 389.  
**On appeal**  
U.S.—*U.S. v. De La Cruz*, 870 F.2d 1192 (7th Cir. 1989).  
**A.L.R. Library**  
Court appointment of attorney to represent, without compensation, indigent in civil action, 52 A.L.R.4th 1063.
- 2 U.S.—*Family Div. Trial Lawyers of Superior Court-D.C., Inc. v. Moultrie*, 725 F.2d 695 (D.C. Cir. 1984).
- 3 Ala.—*Sparks v. Parker*, 368 So. 2d 528 (Ala. 1979).  
S.C.—*Roberts v. State*, 318 S.C. 219, 456 S.E.2d 905 (1995).  
Tex.—*Gibson v. Marsh*, 710 S.W.2d 107 (Tex. App. El Paso 1986).  
Wis.—*State ex rel. Dressler v. Circuit Court for Racine County, Branch 1*, 163 Wis. 2d 622, 472 N.W.2d 532 (Ct. App. 1991).
- 4 U.S.—*U.S. v. Bertoli*, 994 F.2d 1002 (3d Cir. 1993).  
N.J.—*State v. Rush*, 46 N.J. 399, 217 A.2d 441, 21 A.L.R.3d 804 (1966).
- 5 U.S.—*U.S. v. De La Cruz*, 870 F.2d 1192 (7th Cir. 1989).  
S.C.—*Roberts v. State*, 318 S.C. 219, 456 S.E.2d 905 (1995).
- 6 Tex.—*Braden v. South Main Bank*, 837 S.W.2d 733 (Tex. App. Houston 14th Dist. 1992), writ denied, (Dec. 16, 1992).
- 7 U.S.—*Immediato v. Rye Neck School Dist.*, 73 F.3d 454, 106 Ed. Law Rep. 85 (2d Cir. 1996).  
**Treble damages**  
The treble damages provision of a statute authorizing loans to medical and dental students in return for three years' general practice in a medical service area of the state did not impose involuntary servitude on a physician who voluntarily agreed to the terms of loan contracts where the sanction for breach of promise was payment of money damages rather than enforced service.  
S.C.—*South Carolina Dept. of Health and Environmental Control v. Kennedy*, 289 S.C. 73, 344 S.E.2d 859 (Ct. App. 1986).

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16A C.J.S. Constitutional Law § 802

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Constitutional Law

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PART III. Overview of Protected Personal Rights and Freedoms; Police Power

IX. Personal, Civil, and Political Rights and Freedoms

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§ 802. Civil commitment to mental health institution

[Topic Summary](#) | [References](#) | [Correlation Table](#)

West's Key Number Digest

West's Key Number Digest, [Human Trafficking and Slavery](#)  3, 4, 5(1), 13, 14, 15(1) to 15(4), 15(9), 152

Persons civilly committed to mental health institutions are protected by the Thirteenth Amendment.

Persons civilly committed to mental health institutions are protected by the Thirteenth Amendment.<sup>1</sup> Therefore, while inmates may be required to perform without compensation work designed to reduce the financial burden of the institution<sup>2</sup> as long as the work is reasonably related to a therapeutic program,<sup>3</sup> if the work is excessive or unrelated to therapeutic purposes or to the inmates' personal needs, the Thirteenth Amendment is violated.<sup>4</sup>

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Footnotes

<sup>1</sup> U.S.—U.S. v. Solomon, 563 F.2d 1121 (4th Cir. 1977); King v. Carey, 405 F. Supp. 41 (W.D. N.Y. 1975); Downs v. Department of Public Welfare, 368 F. Supp. 454 (E.D. Pa. 1973).

- 2 Ind.—*Bayh v. Sonnenburg*, 573 N.E.2d 398 (Ind. 1991).
- 3 U.S.—*Jobson v. Henne*, 355 F.2d 129 (2d Cir. 1966); *King v. Carey*, 405 F. Supp. 41 (W.D. N.Y. 1975).  
Colo.—*Buzzelle's Estate v. Colorado State Hospital*, 176 Colo. 554, 491 P.2d 1369 (1971).  
N.Y.—*Lauer v. State*, 57 A.D.2d 673, 393 N.Y.S.2d 813 (3d Dep't 1977).
- 4 U.S.—*Jobson v. Henne*, 355 F.2d 129 (2d Cir. 1966); *King v. Carey*, 405 F. Supp. 41 (W.D. N.Y. 1975);  
*Weidenfeller v. Kidulis*, 380 F. Supp. 445 (E.D. Wis. 1974).

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## 16A C.J.S. Constitutional Law § 803

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##### b. Particular Applications

## § 803. Control and education of children

[Topic Summary](#) | [References](#) | [Correlation Table](#)

### West's Key Number Digest

West's Key Number Digest, [Human Trafficking and Slavery](#)  3, 4, 5(1), 13, 14, 15(1) to 15(4), 15(9), 152

**Constitutional provisions relating to involuntary servitude do not apply to authority for the control and education of children.**

Although the Thirteenth Amendment prohibits a person from selling his or her child into bondage,<sup>1</sup> state and federal constitutional provisions relating to involuntary servitude do not apply to the legitimate authority for the control and education of children since a child may be subjected to restraints that may be necessary for his or her proper education and discipline that could not be applied to adults.<sup>2</sup> Accordingly, statutes providing for the confinement of wayward minors or juvenile delinquents in training schools or detention homes are not unconstitutional as creating involuntary servitude.<sup>3</sup> A juvenile court's disposition order has been held to constitute punishment for a crime within the "punishment for crime" exception to the Amendment,<sup>4</sup> and, therefore, an order of such a court compelling restitution or community service is not prohibited as involuntary servitude.<sup>5</sup> Likewise, a work requirement imposed upon a juvenile sentenced to incarceration does not necessarily impose involuntary servitude and peonage on the juvenile.<sup>6</sup> However, the Thirteenth Amendment has been found to be applicable to juveniles civilly

committed to state camps who have asserted an excessive work schedule.<sup>7</sup> Moreover, while states no doubt possess legitimate power to protect children from harm, that power does not include a free-floating power to restrict the ideas to which children may be exposed.<sup>8</sup>

School districts' graduation requirements of community service have been held not to violate the Thirteenth Amendment's prohibition against involuntary servitude.<sup>9</sup>

The Thirteenth Amendment protects the right of mothers and children not to be forcefully separated without being properly adjudicated as neglectful and neglected.<sup>10</sup>

***Compelling child to attend day care facility.***

A day care provider and its manager do not violate a noncustodial parent's rights or the child's rights under the Thirteenth Amendment by compelling the child to attend a day care facility and refusing to let the parent remove the child from there where a state court has entered an order placing the child in day care and prohibiting the parent from visiting or removing the child from there, the child is not forced to perform labor, and the custodial parent refuses to place the child in different day care.<sup>11</sup>

**CUMULATIVE SUPPLEMENT**

**Cases:**

The constraint on state compulsion of speech is not limited to ideological messages; compelled statements of fact are equally proscribed by the First Amendment. [U.S.C.A. Const.Amend. 1. Cressman v. Thompson, 798 F.3d 938 \(10th Cir. 2015\).](#)

**[END OF SUPPLEMENT]**

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**Footnotes**

- 1 U.S.—[U.S. v. King, 840 F.2d 1276 \(6th Cir. 1988\).](#)
- 2 Cal.—[In re Bacon, 240 Cal. App. 2d 34, 49 Cal. Rptr. 322 \(1st Dist. 1966\)](#) (disapproved of on other grounds by, [In re Brown, 9 Cal. 3d 612, 108 Cal. Rptr. 465, 510 P.2d 1017 \(1973\)](#)).  
N.M.—[In re Santillanes, 1943-NMSC-011, 47 N.M. 140, 138 P.2d 503 \(1943\).](#)
- 3 Ga.—[Garner v. Wood, 188 Ga. 463, 4 S.E.2d 137 \(1939\).](#)
- 4 Wash.—[Matter of Welfare of Erickson, 24 Wash. App. 808, 604 P.2d 513 \(Div. 2 1979\).](#)  
As to punishment for crime as expressly exempt from the operation of the Thirteenth Amendment, see § 804.
- 5 Wash.—[Matter of Welfare of Erickson, 24 Wash. App. 808, 604 P.2d 513 \(Div. 2 1979\).](#)  
**Condition of probation**  
Ga.—[M.J.W. v. State, 133 Ga. App. 350, 210 S.E.2d 842 \(1974\).](#)
- 6 Tex.—[Matter of S.C., 790 S.W.2d 766 \(Tex. App. Austin 1990\), writ denied, \(Nov. 7, 1990\).](#)
- 7 U.S.—[King v. Carey, 405 F. Supp. 41 \(W.D. N.Y. 1975\).](#)
- 8 U.S.—[Brown v. Entertainment Merchants Ass'n, 131 S. Ct. 2729, 180 L. Ed. 2d 708 \(2011\).](#)
- 9 U.S.—[Steirer by Steirer v. Bethlehem Area School Dist., 987 F.2d 989, 81 Ed. Law Rep. 734 \(3d Cir. 1993\);](#)  
[Herndon by Herndon v. Chapel Hill-Carrboro City Bd. of Educ., 89 F.3d 174, 110 Ed. Law Rep. 1037 \(4th Cir. 1996\);](#) [Immediato by Immediato v. Rye Neck School Dist., 873 F. Supp. 846, 108 Ed. Law Rep. 92 \(S.D. N.Y. 1995\), judgment aff'd, 73 F.3d 454, 106 Ed. Law Rep. 85 \(2d Cir. 1996\).](#)
- 10 U.S.—[Nicholson v. Williams, 203 F. Supp. 2d 153 \(E.D. N.Y. 2002\).](#)

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U.S.—[Fisher v. Lynch](#), 571 F. Supp. 2d 1230 (D. Kan. 2008).

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## 16A C.J.S. Constitutional Law § 804

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## § 804. Criminal penalties; prison labor

[Topic Summary](#) | [References](#) | [Correlation Table](#)

### West's Key Number Digest

West's Key Number Digest, [Human Trafficking and Slavery](#)  15(5) to 15(7)

**Involuntary servitude as a punishment for a crime of which the party has been duly convicted is expressly exempted from the operation of the Thirteenth Amendment and may be required. Moreover, according to most authority, compelling an incarcerated inmate to work does not violate his or her Thirteenth Amendments rights even if the work is without pay.**

Involuntary servitude as a punishment for a crime of which the party has been duly convicted is expressly exempted from the operation of the Thirteenth Amendment to the Federal Constitution and may therefore be required.<sup>1</sup> When a person is duly tried, convicted and sentenced in accordance with the law, no issue of peonage or involuntary servitude arises.<sup>2</sup> The Amendment refers to crime in its generic sense<sup>3</sup> and therefore includes misdemeanors<sup>4</sup> and violations of municipal ordinances.<sup>5</sup>

Mere imprisonment is not constitutionally forbidden involuntary servitude.<sup>6</sup> Imprisonment after the revocation of probation, for violating conditions of probation, does not constitute involuntary servitude as the defendant is simply serving out a sentence

previously imposed as punishment for a crime.<sup>7</sup> Also, the Thirteenth Amendment does not invalidate a statute providing for imprisonment for contempt of court<sup>8</sup> or for failure to pay a fine and costs imposed for violating a municipal ordinance.<sup>9</sup>

It does not violate the Thirteenth Amendment to imprison a defendant prior to his or her sentencing when he or she is unable to meet bail, so long as he or she is given credit for the presentence confinement upon sentencing,<sup>10</sup> even if the court's consideration of the prior imprisonment does not appear on the face of the judgment,<sup>11</sup> or to condition a grant of probation<sup>12</sup> or pretrial bail<sup>13</sup> upon the defendant's obtaining full-time employment. However, imprisonment where the defendant's conviction is invalid for some reason is forbidden as violative of the Thirteenth Amendment.<sup>14</sup> Similarly, where prosecution costs assessed against someone convicted of an offense are not regarded as a part of the punishment, imprisonment to work out such costs violates the prohibition against involuntary servitude,<sup>15</sup> as does a requirement to satisfy the debt by performing uncompensated labor for the state.<sup>16</sup>

***Offer not to prosecute in exchange for service as confidential informant.***

A law enforcement agency's offer not to prosecute a defendant if he or she agrees to work as a confidential informant for the agency does not violate the defendant's Thirteenth Amendment rights and antipeonage statute where the defendant freely and voluntarily enters into the arrangement.<sup>17</sup>

***Requiring work to pay for court-appointed counsel.***

It has been held that requiring an indigent, convicted defendant, as a condition of probation or conditional discharge, to reimburse the government for the expense of court-appointed counsel by performing uncompensated work for the government does not constitute involuntary servitude.<sup>18</sup> It has also been held, however, that requiring an indigent defendant to work for the government to pay for his or her appointed counsel is involuntary servitude for debt rather than punishment for a crime.<sup>19</sup>

***Prison labor.***

According to most authority, compelling an incarcerated inmate to work does not violate his or her Thirteenth Amendments rights,<sup>20</sup> even if the work is without pay,<sup>21</sup> as long as the work is not unduly onerous or afflictive.<sup>22</sup> Moreover, a breach of an agreement to pay wages to a validly incarcerated prisoner does not of itself necessarily constitute peonage or involuntary servitude.<sup>23</sup> However, it has been held that labor enforced as a punishment is involuntary servitude,<sup>24</sup> and the constitutional preclusion of involuntary servitude has been held violated by statutes that provides for imprisonment at hard labor.<sup>25</sup>

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**Footnotes**

- 1 U.S.—[Ray v. Mabry](#), 556 F.2d 881 (8th Cir. 1977); [Ruark v. Solano](#), 928 F.2d 947 (10th Cir. 1991); [Burke v. North Dakota Dept. of Correction and Rehabilitation](#), 620 F. Supp. 2d 1035 (D.N.D. 2009).  
Ga.—[Smith v. State](#), 229 Ga. 727, 194 S.E.2d 82 (1972).  
La.—[Callaghan v. Department of Fire](#), 385 So. 2d 25 (La. Ct. App. 4th Cir. 1980).  
Minn.—[Wilkinson v. McManus](#), 299 Minn. 112, 216 N.W.2d 264 (1974).  
Ohio—[Franks v. Rankin](#), 2012-Ohio-1920, 2012 WL 1531031 (Ohio Ct. App. 10th Dist. Franklin County 2012).  
**Under state constitution**  
La.—[Rochon v. Blackburn](#), 727 So. 2d 602 (La. Ct. App. 1st Cir. 1998).

**A.L.R. Library**

Application of Section 1 of 13th Amendment to United States Constitution, U.S. Const. Amend. XIII, s1, Prohibiting Slavery and Involuntary Servitude—Labor Required as Punishment for Crime, 87 A.L.R.6th 109.

U.S.—*Williams v. Henagan*, 595 F.3d 610 (5th Cir. 2010).

Fla.—*City of Fort Lauderdale v. King*, 222 So. 2d 6 (Fla. 1969).

Ky.—*Stone v. City of Paducah*, 120 Ky. 322, 27 Ky. L. Rptr. 717, 86 S.W. 531 (1905).

Wis.—*In re Bergin*, 31 Wis. 383, 1872 WL 3172 (1872).

Del.—*Dunn v. Mayor and Council of City of Wilmington*, 59 Del. 287, 219 A.2d 153 (1966).

Ill.—*City of Chicago v. Kunowski*, 308 Ill. 206, 139 N.E. 28 (1923).

Neb.—*Smolczyk v. Gaston*, 147 Neb. 681, 24 N.W.2d 862 (1946).

Wis.—*City of Milwaukee v. Horvath*, 31 Wis. 2d 490, 143 N.W.2d 446 (1966).

Wash.—*State v. Barklind*, 87 Wash. 2d 814, 557 P.2d 314 (1976).

Wis.—*State v. Gerard*, 57 Wis. 2d 611, 205 N.W.2d 374 (1973).

Ill.—*Schmook v. Fane*, 301 Ill. App. 626, 22 N.E.2d 450 (2d Dist. 1939).

Neb.—*Smolczyk v. Gaston*, 147 Neb. 681, 24 N.W.2d 862 (1946).

As to imprisonment as punishment for contempt, see C.J.S., Contempt §§ 183 to 186.

Wis.—*City of Milwaukee v. Horvath*, 31 Wis. 2d 490, 143 N.W.2d 446 (1966).

Colo.—*Maciel v. People*, 172 Colo. 8, 469 P.2d 135 (1970).

**No exemption**

Institutions housing pretrial detainees are not exempt from the scope of the Thirteenth Amendment.

U.S.—*McGarry v. Pallito*, 687 F.3d 505, 87 A.L.R.6th 713 (2d Cir. 2012).

Colo.—*Maciel v. People*, 172 Colo. 8, 469 P.2d 135 (1970).

Cal.—*People v. Hodgkin*, 194 Cal. App. 3d 795, 239 Cal. Rptr. 831 (5th Dist. 1987).

U.S.—*Walls v. U. S.*, 364 A.2d 154 (D.C. 1976).

**No assistance of counsel**

Imprisonment of a defendant based on conviction in a case where defendant has not enjoyed the fundamental right to assistance of counsel is violative of the constitutional amendment forbidding involuntary servitude.

U.S.—*United States v. Morgan*, 222 F.2d 673 (2d Cir. 1955).

**Conviction without evidence**

U.S.—*U.S. ex rel. Caminito v. Murphy*, 222 F.2d 698 (2d Cir. 1955).

U.S.—*Anderson v. Ellington*, 300 F. Supp. 789 (M.D. Tenn. 1969).

Va.—*Wright v. Matthews*, 209 Va. 246, 163 S.E.2d 158 (1968).

**Costs of legal counsel**

N.H.—*Opinion of the Justices*, 121 N.H. 531, 431 A.2d 144 (1981).

Miss.—*Sanders v. State*, 846 So. 2d 230 (Miss. Ct. App. 2002).

N.H.—*Opinion of the Justices*, 121 N.H. 531, 431 A.2d 144 (1981).

Ohio—*State ex rel. Carriger v. City of Galion*, 53 Ohio St. 3d 250, 560 N.E.2d 194 (1990).

As to the prohibition on imprisonment for debt, see §§ 813 to 822.

U.S.—*Murray v. Mississippi Dept. of Corrections*, 911 F.2d 1167 (5th Cir. 1990); *Berry v. Bunnell*, 39 F.3d 1056 (9th Cir. 1994); *Jones v. Tyson Foods, Inc.*, 971 F. Supp. 2d 648 (N.D. Miss. 2013); *Lymon v. Aramark Corp.*, 728 F. Supp. 2d 1222 (D.N.M. 2010), *aff'd*, 499 Fed. Appx. 771 (10th Cir. 2012); *Burke v. North Dakota Dept. of Correction and Rehabilitation*, 620 F. Supp. 2d 1035 (D.N.D. 2009).

**While appeal is pending**

U.S.—*Plaisance v. Phelps*, 845 F.2d 107, 11 Fed. R. Serv. 3d 101 (5th Cir. 1988).

**Requirement that prisoners clean cells**

U.S.—*McGarry v. Pallito*, 687 F.3d 505, 87 A.L.R.6th 713 (2d Cir. 2012).

Utah—*Friedman v. Salt Lake County*, 2013 UT App 137, 305 P.3d 162 (Utah Ct. App. 2013).

U.S.—*Murray v. Mississippi Dept. of Corrections*, 911 F.2d 1167 (5th Cir. 1990); *Sigler v. Lowrie*, 404 F.2d 659 (8th Cir. 1968); *Serra v. Lappin*, 600 F.3d 1191 (9th Cir. 2010); *Howerton v. Mississippi County, Arkansas*, 361 F. Supp. 356 (E.D. Ark. 1973); *Banks v. Norton*, 346 F. Supp. 917 (D. Conn. 1972); *Davis v. Texas Bd. of Criminal Justice*, 2008 WL 5070974 (E.D. Tex. 2008); *Borror v. White*, 377 F. Supp. 181 (W.D. Va. 1974).

Alaska—*McGinnis v. Stevens*, 543 P.2d 1221 (Alaska 1975).

Minn.—[Wilkinson v. McManus](#), 299 Minn. 112, 216 N.W.2d 264 (1974).

**Hard labor without pay**

U.S.—[Williams v. Henagan](#), 595 F.3d 610 (5th Cir. 2010).

22 U.S.—[Morgan v. LaVallee](#), 526 F.2d 221 (2d Cir. 1975).

23 U.S.—[Davis v. Fisher](#), 546 F.2d 66 (5th Cir. 1977).

24 Neb.—[Smolczyk v. Gaston](#), 147 Neb. 681, 24 N.W.2d 862 (1946).

25 Iowa—[Flannagan v. Jepson](#), 177 Iowa 393, 158 N.W. 641 (1916) (disapproved of on other grounds by, [Chiodo v. Section 43.24 Panel](#), 846 N.W.2d 845 (Iowa 2014)).

Neb.—[Smolczyk v. Gaston](#), 147 Neb. 681, 24 N.W.2d 862 (1946).

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## 16A C.J.S. Constitutional Law § 805

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### Constitutional Law

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### PART III. Overview of Protected Personal Rights and Freedoms; Police Power

#### IX. Personal, Civil, and Political Rights and Freedoms

##### C. Personal Liberty

##### 4. Involuntary Servitude

##### b. Particular Applications

## § 805. Divorce or dissolution of marriage; child support

[Topic Summary](#) | [References](#) | [Correlation Table](#)

### West's Key Number Digest

West's Key Number Digest, [Human Trafficking and Slavery](#)  [3](#), [4](#), [5\(1\)](#), [13](#), [14](#), [15\(1\)](#) to [15\(4\)](#), [15\(9\)](#), [152](#)

**A divorce decree directing one party to pay alimony to the other party imposes neither involuntary servitude nor peonage. In fixing child support, a court may direct the paying spouse to seek employment commensurate with his or her abilities and educational background.**

A divorce decree directing one party to pay alimony to the other party imposes neither involuntary servitude<sup>1</sup> nor peonage<sup>2</sup> even if the decree requires that the paying spouse continue to work or find other sources of income to meet his or her obligation.<sup>3</sup> Additionally, the court, in fixing child support, may direct the paying spouse to seek employment commensurate with his or her abilities and educational background without violating the Amendment.<sup>4</sup> Further, a marriage dissolution statute does not violate the Thirteenth Amendment by imposing the burden of paying attorney's fees upon one party for the other.<sup>5</sup>

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Footnotes

- 1 Ala.—*Hicks v. Hicks*, 387 So. 2d 207 (Ala. Civ. App. 1980), writ denied, 387 So. 2d 209 (Ala. 1980).  
Ill.—*In re Marriage of Smith*, 77 Ill. App. 3d 858, 33 Ill. Dec. 332, 396 N.E.2d 859 (2d Dist. 1979).  
Ind.—*McCarthy v. McCarthy*, 150 Ind. App. 640, 276 N.E.2d 891 (1971).
- 2 Ill.—*In re Marriage of Smith*, 77 Ill. App. 3d 858, 33 Ill. Dec. 332, 396 N.E.2d 859 (2d Dist. 1979).
- 3 Conn.—*Lawler v. Lawler*, 16 Conn. App. 193, 547 A.2d 89 (1988).  
Minn.—*Warwick v. Warwick*, 438 N.W.2d 673 (Minn. Ct. App. 1989).
- 4 Cal.—*Moss v. Superior Court (Ortiz)*, 17 Cal. 4th 396, 71 Cal. Rptr. 2d 215, 950 P.2d 59 (1998).  
D.C.—*Freeman v. Freeman*, 397 A.2d 554 (D.C. 1979).
- 5 Colo.—*In re Marriage of Franks*, 189 Colo. 499, 542 P.2d 845 (1975).

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## 16A C.J.S. Constitutional Law § 806

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### PART III. Overview of Protected Personal Rights and Freedoms; Police Power

#### IX. Personal, Civil, and Political Rights and Freedoms

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##### b. Particular Applications

## § 806. Labor and employment relations

[Topic Summary](#) | [References](#) | [Correlation Table](#)

### West's Key Number Digest

West's Key Number Digest, [Human Trafficking and Slavery](#)  5(1), 15(2)

**The Thirteenth Amendment does not limit the right of employees to act through organizations. While an employer may not ordinarily compel employees to continue work, or to resume work after a stoppage, statutes forbidding unfair labor practices on the part of labor organizations are not invalid.**

In general, the proscription against involuntary servitude contained in the Thirteenth Amendment does not limit the right of employees to act through a group organization,<sup>1</sup> as in the discontinuance or refusal of employment,<sup>2</sup> and statutory provisions permitting employers and labor organizations to enter into union shop agreements do not contravene the proscription.<sup>3</sup>

An employer is not ordinarily entitled to an injunction to compel employees to continue work, or to resume work after a strike or stoppage, even if the stoppage or strike is in violation of the collective bargaining agreement between the employer and the employees' union, since such an injunction would violate the Thirteenth Amendment.<sup>4</sup> However, the Thirteenth Amendment is not violated by an injunction enforcing an arbitrator's cease and desist order after the arbitrator has determined that a collective

bargaining agreement has been violated by a union work stoppage.<sup>5</sup> Where there is no contractual relation between a union and an employer, an injunction requiring the members of the union to perform certain work for such employer will violate the constitutional provision against involuntary servitude.<sup>6</sup>

An order directing a union and its officers to cease and desist from directing, instigating, or encouraging strike action by employees is not invalid since it does not prohibit any employee or group of employees, individually or in concert, from quitting work.<sup>7</sup> Furthermore, a statute or order is not invalid which commands the union and its officers to cease and desist from engaging, or inducing members to engage, in unfair labor practices,<sup>8</sup> such as secondary boycotts or picketing.<sup>9</sup>

An ordinance prohibiting picketing generally does not violate the Thirteenth Amendment.<sup>10</sup> A restriction on the right to strike under certain narrowly circumscribed circumstances during a cooling-off period has also been held not to constitute involuntary servitude<sup>11</sup> because even during the specified period individual workers have the right to quit work and the employer the right to discharge a worker for cause.<sup>12</sup> A statute prohibiting strikes and lockouts in industries affected with a public interest during an investigation, hearing, or arbitration of a dispute is not unconstitutional as compelling involuntary servitude.<sup>13</sup> Similarly, an order enjoining a strike or work stoppage by public employees, such as school teachers, does not violate the prohibition against involuntary servitude.<sup>14</sup> Provisions authorizing an injunction against a strike or lockout affecting substantial parts of industry engaged in interstate or foreign commerce and imperiling the national health or safety, being designed to cope with national emergencies, do not offend the Thirteenth Amendment.<sup>15</sup>

#### ***"Right to work" law.***

Provisions of a "right to work" law which prohibit employers from requiring union membership or payment of monies as a condition of employment and make a knowing violation of that provision a criminal offense did not violate a state constitutional provision governing the right to compensation for services and property where, on the face of the law, there is no state demand for services; it is federal law, rather than state law, which provides a duty of fair representation; and a union's federal obligation to represent all employees in a bargaining unit is optional and occurs only when a union elects to be the exclusive bargaining agent, for which it is justly compensated by the right to bargain exclusively with the employer.<sup>16</sup>

#### ***Noncompetition agreement.***

An agreement not to compete, signed as a condition of employment, does not violate the Thirteenth Amendment.<sup>17</sup>

### **CUMULATIVE SUPPLEMENT**

#### **Cases:**

City ordinance requiring that all demolition work, once begun, had to be completed within 72-hours for residential structures and within reasonable amount of time for commercial structures, to continue daily until finished, except for holidays, Sundays, and inclement weather days, did not violate constitutional prohibitions on slavery and involuntary servitude, though defendant, who was demolition contractor, asserted it obligated him to work daily at the city's direction rather than schedule imposed by demolition contract; defendant was not forced or compelled in any way to undertake demolition projects, and once defendant agreed to undertake that work, it was not unreasonable to require him to abide by ordinances passed by city for safety and health reasons. *U.S.C.A. Const.Amend. 13*; Const. Art. 1, § 6. *State v. McKinley*, 2016-Ohio-3420, 66 N.E.3d 200 (Ohio Ct. App. 7th Dist. Mahoning County 2016).

[END OF SUPPLEMENT]

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Footnotes

- 1 U.S.—*U.S. v. Petrillo*, 68 F. Supp. 845 (N.D. Ill. 1946), judgment rev'd on other grounds, 332 U.S. 1, 67 S. Ct. 1538, 91 L. Ed. 1877 (1947).
- 2 U.S.—*U.S. v. Petrillo*, 68 F. Supp. 845 (N.D. Ill. 1946), judgment rev'd on other grounds, 332 U.S. 1, 67 S. Ct. 1538, 91 L. Ed. 1877 (1947).
- 3 Tex.—*International Ass'n of Machinists v. Sandsberry*, 277 S.W.2d 776 (Tex. Civ. App. Amarillo 1954), judgment aff'd, 156 Tex. 340, 295 S.W.2d 412 (1956).
- 4 Ohio—*General Elec. Co. v. International Union United Auto., Aircraft and Agr. Implement Workers of America (U.A.W.-C.I.O.)*, 93 Ohio App. 139, 50 Ohio Op. 399, 64 Ohio L. Abs. 231, 108 N.E.2d 211 (1st Dist. Hamilton County 1952).
- 5 U.S.—*New Orleans S.S. Ass'n v. General Longshore Workers*, 626 F.2d 455 (5th Cir. 1980), judgment aff'd, 457 U.S. 702, 102 S. Ct. 2672, 73 L. Ed. 2d 327 (1982).
- 6 Fla.—*Henderson v. Coleman*, 150 Fla. 185, 7 So. 2d 117 (1942).
- 7 U.S.—*N.L.R.B. v. National Maritime Union of America*, 175 F.2d 686 (2d Cir. 1949).
- 8 U.S.—*N.L.R.B. v. Local 74, United Broth. of Carpenters & Joiners of America, A.F. of L.*, 181 F.2d 126 (6th Cir. 1950), judgment aff'd, 341 U.S. 707, 71 S. Ct. 966, 95 L. Ed. 1309 (1951); *Building & Construction Trades Council v. LeBaron*, 181 F.2d 449 (9th Cir. 1949); *International Union, United Mine Workers of America v. N.L.R.B.*, 184 F.2d 392 (D.C. Cir. 1950).  
**Compelling contract violations**  
 Injunction restraining union and its members from compelling employers to violate contracts is not "involuntary servitude."  
 U.S.—*International Brotherhood of Electrical Workers, Local No. 134 v. Western Union Telegraph Co.*, 46 F.2d 736 (C.C.A. 7th Cir. 1931).
- 9 U.S.—*N.L.R.B. v. Wine, Liquor & Distillery Workers Union, Local 1, Distillery, Rectifying and Wine Workers Intern. Union of America, A.F. of L.*, 178 F.2d 584, 16 A.L.R.2d 762 (2d Cir. 1949); *N.L.R.B. v. Local 74, United Broth. of Carpenters & Joiners of America, A.F. of L.*, 181 F.2d 126 (6th Cir. 1950), judgment aff'd, 341 U.S. 707, 71 S. Ct. 966, 95 L. Ed. 1309 (1951); *Printing Specialties and Paper Convert. Union, Local 388 AFL v. LeBaron*, 171 F.2d 331 (9th Cir. 1948); *N. L. R. B. v. United Broth. of Carpenters and Joiners of America, Dist. Council of Kansas City, Mo., A. F. of L.*, 184 F.2d 60 (10th Cir. 1950).  
 Colo.—*Denver Milk Producers v. International Broth. of Teamsters, Chauffeurs, Warehousemen and Helpers' Union*, 116 Colo. 389, 183 P.2d 529 (1947).
- 10 U.S.—*U.S. v. Petrillo*, 332 U.S. 1, 67 S. Ct. 1538, 91 L. Ed. 1877 (1947).  
 Ind.—*Thomas v. City of Indianapolis*, 195 Ind. 440, 145 N.E. 550, 35 A.L.R. 1194 (1924).
- 11 U.S.—*France Packing Co. v. Dailey*, 166 F.2d 751 (C.C.A. 3d Cir. 1948).
- 12 U.S.—*France Packing Co. v. Dailey*, 166 F.2d 751 (C.C.A. 3d Cir. 1948).
- 13 Colo.—*People v. United Mine Workers of America, Dist. 15*, 70 Colo. 269, 201 P. 54 (1921).  
 N.J.—*State v. Traffic Tel. Workers' Federation of N. J.*, 2 N.J. 335, 66 A.2d 616, 9 A.L.R.2d 854 (1949).
- 14 Fla.—*Pinellas County Classroom Teachers Ass'n v. Board of Public Instruction of Pinellas County*, 214 So. 2d 34 (Fla. 1968).  
 Ky.—*Jefferson County Teachers Ass'n v. Board of Ed. of Jefferson County*, 463 S.W.2d 627 (Ky. 1970).  
 N.J.—*In re Block*, 50 N.J. 494, 236 A.2d 589 (1967).  
 R.I.—*School Committee of City of Pawtucket v. Pawtucket Teachers Alliance, Local No. 930, AFT, AFL*, 101 R.I. 243, 221 A.2d 806 (1966).
- 15 U.S.—*U.S. v. International Longshoremen's and Warehousemen's Union (CIO)*, 78 F. Supp. 710 (N.D. Cal. 1948); *U.S. v. Avco Corp., Lycoming Division, Stratford, Conn.*, 270 F. Supp. 665 (D. Conn. 1967); *U.S. v. International Union, United Mine Workers of America*, 89 F. Supp. 187 (D. D.C. 1950).
- 16 Ind.—*Zoeller v. Sweeney*, 19 N.E.3d 749 (Ind. 2014).

17

U.S.—[Apperson v. Ampad Corp.](#), 641 F. Supp. 747 (N.D. Ill. 1986).

Cal.—[In re Johnson](#), 178 B.R. 216 (B.A.P. 9th Cir. 1995).

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## 16A C.J.S. Constitutional Law § 807

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### PART III. Overview of Protected Personal Rights and Freedoms; Police Power

#### IX. Personal, Civil, and Political Rights and Freedoms

##### C. Personal Liberty

##### 4. Involuntary Servitude

##### b. Particular Applications

## § 807. Labor and employment relations—Breach of labor contract

[Topic Summary](#) | [References](#) | [Correlation Table](#)

### West's Key Number Digest

West's Key Number Digest, [Human Trafficking and Slavery](#)  5(1), 15(2)

**Every worker has the constitutional right to discontinue or refuse an employment, and no state can make quitting work any component of a crime or make criminal sanctions available for holding unwilling persons to labor.**

The Thirteenth Amendment supports the constitutional right of every worker to discontinue or refuse an employment.<sup>1</sup>

Statutes declaring it a crime for an employee to fail or refuse to perform services under a contract, or to refund advances made by the employer, violate the constitutional prohibition against involuntary servitude<sup>2</sup> in the absence of a finding of fraudulent intent.<sup>3</sup> Moreover, if statute making a mere breach of the contract by a failure to perform the services prima facie evidence of an intent to defraud has been held void where, as a rule of evidence, the accused is not permitted to testify as to his or her uncommunicated motives, purpose, or intention in order to rebut the prima facie case.<sup>4</sup> In fact, where the existence of such a statutory provision, as to the presumption of intent to defraud, has a coercive effect in producing a plea of guilty to a charge under the former provision, the entire statute containing both provisions is void<sup>5</sup> even though the defendant would be free to

offer his or her sworn word against the statutory presumption and even though, as a matter of state law, the section providing for the presumption of intent to defraud is regarded as separable from the rest of the statute.<sup>6</sup>

## CUMULATIVE SUPPLEMENT

### Cases:

To establish a cognizable self-censorship injury, so as to have standing for a vagueness claim, a plaintiff must show that: (1) he seriously wishes to speak; (2) such speech would arguably be affected by the rules, but the rules are at least arguably vague as they apply to him; and (3) there is at least a minimal probability that the rules will be enforced, if they are violated. [U.S.C.A. Const.Amend. 1. Wollschlaeger v. Governor of Florida, 797 F.3d 859 \(11th Cir. 2015\)](#).

## [END OF SUPPLEMENT]

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### Footnotes

- 1 U.S.—[U.S. v. Petrillo, 68 F. Supp. 845 \(N.D. Ill. 1946\)](#), judgment rev'd on other grounds, [332 U.S. 1, 67 S. Ct. 1538, 91 L. Ed. 1877 \(1947\)](#).
- 2 U.S.—[Pollock v. Williams, 322 U.S. 4, 64 S. Ct. 792, 88 L. Ed. 1095 \(1944\)](#).  
Wis.—[State v. Brownson, 157 Wis. 2d 404, 459 N.W.2d 877 \(Ct. App. 1990\)](#).
- 3 Wis.—[State v. Brownson, 157 Wis. 2d 404, 459 N.W.2d 877 \(Ct. App. 1990\)](#).
- 4 U.S.—[Pollock v. Williams, 322 U.S. 4, 64 S. Ct. 792, 88 L. Ed. 1095 \(1944\)](#).
- 5 U.S.—[Pollock v. Williams, 322 U.S. 4, 64 S. Ct. 792, 88 L. Ed. 1095 \(1944\)](#).
- 6 U.S.—[Pollock v. Williams, 322 U.S. 4, 64 S. Ct. 792, 88 L. Ed. 1095 \(1944\)](#).

## 16A C.J.S. Constitutional Law § 808

Corpus Juris Secundum | June 2021 Update

### Constitutional Law

Francis C. Amendola, J.D.; Joseph Bassano, J.D.; John Bourdeau, J.D.; M. Elaine Buccieri, J.D.; James Buchwalter, J.D.; Michael N. Giuliano, J.D.; Lonnie E. Griffith, Jr., J.D.; Eleanor L. Grossman, J.D., of the staff of the National Legal Research Group, Inc.; Jill Gustafson, J.D.; Glenda K. Harnad, J.D.; Alan J. Jacobs, J.D.; John Kimpflen, J.D.; Amy L. Kruse, J.D.; Stephen Lease, J.D.; Sonja Larsen, J.D.; Robert B. McKinney, J.D., of the staff of the National Legal Research Group, Inc.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; Thomas Muskus, J.D.; Sally J.T. Necheles, J.D., LL.M.; Karl Oakes, J.D. and Eric C. Surette, J.D.

### PART III. Overview of Protected Personal Rights and Freedoms; Police Power

#### IX. Personal, Civil, and Political Rights and Freedoms

##### C. Personal Liberty

##### 4. Involuntary Servitude

##### b. Particular Applications

## § 808. Landlord and tenant

[Topic Summary](#) | [References](#) | [Correlation Table](#)

### West's Key Number Digest

West's Key Number Digest, [Human Trafficking and Slavery](#)  3, 4, 5(1), 13, 14, 15(1) to 15(4), 15(9), 152

**Various duties and restrictions imposed on landlords with respect to rental property have been upheld against challenges on the ground of involuntary servitude.**

Services which a landlord is required to perform as necessary incidents to rented housing accommodations for the rental consideration paid<sup>1</sup> and restrictions on landlords' ability to evict tenants<sup>2</sup> are not prohibited involuntary servitude. Local rent control and similar laws imposing restrictions on landlords have been held not to violate the Thirteenth Amendment.<sup>3</sup>

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### Footnotes

- 1 N.Y.—[Suppus v. Bradley](#), 101 N.Y.S.2d 557 (Sup 1950), order aff'd, 278 A.D. 337, 105 N.Y.S.2d 48 (1st Dep't 1951).  
**Lessor's duty to furnish heat, etc.**

A statute making it a misdemeanor for a lessor or any agent or janitor intentionally to fail to furnish such water, heat, etc., as may be required by the terms of a lease and the necessary to proper or customary use of building does not violate the Thirteenth Amendment since the services in question are not strictly personal services but are analogous to services that under the old law might issue out of, or be attached to land.

U.S.—[Marcus Brown Holding Co. v. Feldman](#), 256 U.S. 170, 41 S. Ct. 465, 65 L. Ed. 877 (1921).

2 Cal.—[Nash v. City of Santa Monica](#), 37 Cal. 3d 97, 207 Cal. Rptr. 285, 688 P.2d 894 (1984).

3 U.S.—[Davenport v. Berman](#), 420 F.2d 294 (2d Cir. 1969).

N.Y.—[Sobel v. Higgins](#), 151 Misc. 2d 876, 573 N.Y.S.2d 1000 (Sup 1991).

Or.—[Marquam Inv. Corp. v. Beers](#), 47 Or. App. 711, 615 P.2d 1064 (1980).

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## 16A C.J.S. Constitutional Law § 809

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### Constitutional Law

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### PART III. Overview of Protected Personal Rights and Freedoms; Police Power

#### IX. Personal, Civil, and Political Rights and Freedoms

##### C. Personal Liberty

##### 4. Involuntary Servitude

##### b. Particular Applications

## § 809. Military service and draft as involuntary servitude

[Topic Summary](#) | [References](#) | [Correlation Table](#)

### West's Key Number Digest

West's Key Number Digest, [Human Trafficking and Slavery](#)  [3](#), [4](#), [5\(1\)](#), [13](#), [14](#), [15\(1\)](#) to [15\(4\)](#), [15\(9\)](#), [152](#)

**The courts have not held the Thirteenth Amendment to disallow forced service in the armed forces.**

The courts have not held the Thirteenth Amendment to disallow forced service in the armed forces.<sup>1</sup> The federal government has been allowed to compel individuals to serve in the military forces, and such conscription is not considered to constitute slavery within the meaning of the Thirteenth Amendment.<sup>2</sup> A member of the U.S. military may also be forced to serve as a member of a United Nations peacekeeping force without violating the Thirteenth Amendment prohibition on involuntary servitude.<sup>3</sup> Moreover, the Amendment is not violated by the assignment of a conscientious objector, who requests and is granted the privilege of not bearing arms, to compulsory, involuntary labor in some civilian work of national importance.<sup>4</sup>

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### Footnotes

- 1 U.S.—*U.S. v. Sutter*, 127 F. Supp. 109 (S.D. Cal. 1954); *U.S. v. Smith*, 124 F. Supp. 406 (E.D. Ill. 1954), judgment aff'd, 223 F.2d 921 (7th Cir. 1955); *U.S. v. Leberherz*, 129 F. Supp. 444 (D.N.J. 1955).  
**Reserve agreements**  
Former members of Air National Guard with membership in reserve components of United States Air Force who had signed "ready reserve agreements" and after expiration of agreements were called to active service were not entitled to damages on ground that government subjected them to involuntary servitude in violation of their rights under Thirteenth Amendment where plaintiffs were commissioned reserved officers appointed by President, plaintiffs accepted appointments, served on active duty, and were paid for their services and served during pleasure of President as provided by statute.  
U.S.—*Clark v. U. S.*, 198 Ct. Cl. 593, 461 F.2d 781 (1972).
- 2 U.S.—*Arver v. U.S.*, 245 U.S. 366, 38 S. Ct. 159, 62 L. Ed. 349 (1918); *Immediato v. Rye Neck School Dist.*, 73 F.3d 454, 106 Ed. Law Rep. 85 (2d Cir. 1996); *Roe v. Unocal Corp.*, 70 F. Supp. 2d 1073 (C.D. Cal. 1999).  
**Resignation from military**  
Failure to accept resignation of military officer did not violate his constitutional rights as guaranteed by Thirteenth Amendment.  
U.S.—*Baldauf v. Nitze*, 261 F. Supp. 167 (S.D. Cal. 1966); *Hesse v. Resor*, 266 F. Supp. 31 (E.D. Mo. 1966).  
**Enlistment contract**  
Enforcement of an order requiring plaintiff, who had entered into an enlistment contract with the Air Force when he was 19 years old, to report for active duty would not constitute involuntary servitude in violation of the Thirteenth Amendment.  
U.S.—*Lonchyna v. Brown*, 491 F. Supp. 1352 (N.D. Ill. 1980).
- 3 U.S.—*U.S. ex rel. New v. Rumsfeld*, 350 F. Supp. 2d 80 (D.D.C. 2004).
- 4 U.S.—*U.S. v. Berrier*, 434 F.2d 572 (4th Cir. 1970); *U.S. v. Rogers*, 454 F.2d 601 (7th Cir. 1971); *U.S. v. Anderson*, 467 F.2d 210 (9th Cir. 1972).  
**Low rate of compensation**  
The system devised for treatment of persons who by religious training and belief are conscientiously opposed to participation in war in any form does not deprive them of any of their constitutional rights even though, in practical effect, it deprives them of their full liberty and requires them to work at a rate of compensation far below what could be earned in civilian life and even below what could be earned in the armed forces.  
U.S.—*Weightman v. U.S.*, 142 F.2d 188 (C.C.A. 1st Cir. 1944).  
**Religious affiliation**  
Order directing registrant who had been given conscientious objector classification to report for alternative service to hospital which was affiliated with different religious denomination did not constitute involuntary servitude.  
U.S.—*Hall v. U.S.*, 437 F.2d 1063 (7th Cir. 1971).

## 16A C.J.S. Constitutional Law § 810

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### Constitutional Law

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### PART III. Overview of Protected Personal Rights and Freedoms; Police Power

#### IX. Personal, Civil, and Political Rights and Freedoms

##### C. Personal Liberty

##### 4. Involuntary Servitude

##### b. Particular Applications

## § 810. Tax laws as imposing involuntary servitude

[Topic Summary](#) | [References](#) | [Correlation Table](#)

### West's Key Number Digest

West's Key Number Digest, [Human Trafficking and Slavery](#)  3, 4, 5(1), 13, 14, 15(1) to 15(4), 15(9), 152

**Any involuntary servitude resulting from the tax laws is the not the type addressed by the Thirteenth Amendment.**

Requiring the payment of taxes on income from labor has not been held to constitute a violation of Thirteenth Amendment's prohibition against involuntary servitude.<sup>1</sup> The Internal Revenue Code does not violate the Thirteenth Amendment of the United States Constitution on the asserted ground that it enslaves taxpayers.<sup>2</sup>

Requiring taxpayers to keep records of their income<sup>3</sup> and prepare and file tax returns<sup>4</sup> is not held to impose involuntary servitude. Additionally, judgments imposed upon taxpayers for failing to comply with the tax laws do not violate the Thirteenth Amendment.<sup>5</sup>

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Footnotes

- 1 U.S.—*Porth v. Brodrick*, 214 F.2d 925 (10th Cir. 1954); *Detwiler v. U.S.*, 406 F. Supp. 695 (E.D. Pa. 1975), *aff'd*, 544 F.2d 512 (3d Cir. 1976); *Holmes v. C.I.R.*, T.C. Memo. 2010-42, T.C.M. (RIA) P 2010-042 (2010).  
N.C.—*State v. Sinnott*, 163 N.C. App. 268, 593 S.E.2d 439 (2004).  
Or.—*Leitch v. State Dept. of Revenue*, 16 Or. App. 627, 519 P.2d 1045 (1974).  
Wash.—*Trohimovich v. Department of Labor and Industries*, 73 Wash. App. 314, 869 P.2d 95 (Div. 2 1994).
- 2 U.S.—*Lonsdale v. Egger*, 525 F. Supp. 610 (N.D. Tex. 1981), *dismissed*, 673 F.2d 1325 (5th Cir. 1982).  
**Federal employment taxes**  
U.S.—*Abney v. Campbell*, 206 F.2d 836 (5th Cir. 1953); *U.S. v. Roberts*, 425 F. Supp. 1281 (D. Del. 1977).
- 3 U.S.—*Cracchiola v. C. I. R.*, 643 F.2d 1383 (9th Cir. 1981).
- 4 U.S.—*U.S. v. Kahl*, 583 F.2d 1351 (5th Cir. 1978); *U.S. v. MacLeod*, 436 F.2d 947 (8th Cir. 1971); *Kasey v. C. I. R.*, 457 F.2d 369 (9th Cir. 1972).
- 5 U.S.—*Garcia v. U.S.*, 421 F.2d 1231 (5th Cir. 1970).  
**Levy on wages**  
A levy on a taxpayer's wages to collect unpaid federal income taxes did not compel the taxpayer to work against her will for the benefit of the government and did not constitute involuntary servitude.  
U.S.—*Beltran v. Cohen*, 303 F. Supp. 889 (N.D. Cal. 1969).

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## 16A C.J.S. Constitutional Law § 811

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### Constitutional Law

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##### 4. Involuntary Servitude

##### b. Particular Applications

## § 811. Welfare and disability benefits

[Topic Summary](#) | [References](#) | [Correlation Table](#)

### West's Key Number Digest

West's Key Number Digest, [Human Trafficking and Slavery](#)  3, 4, 5(1), 13, 14, 15(1) to 15(4), 15(9), 152

**Various rules pertaining to recipients of welfare and disability benefits have been upheld against challenges based on the imposition of involuntary servitude.**

Rules requiring certain welfare recipients to participate in a state work program<sup>1</sup> or report to the state employment service to pick up their assistance checks and accept referral to employment positions<sup>2</sup> do not violate the Thirteenth Amendment, and a statute which provides that a recipient who refuses to report for or perform such work shall become ineligible for relief does not place recipients in peonage or involuntary servitude.<sup>3</sup> Similarly, an ordinance which authorizes a reduction of disability retirement benefits if a disabled public employee refuses employment suitable to his or her capacity does not impose involuntary servitude.<sup>4</sup>

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### Footnotes

- 1 U.S.—*Brogan v. San Mateo County*, 901 F.2d 762 (9th Cir. 1990).
- 2 U.S.—*Dublino v. New York State Dept. of Social Services*, 348 F. Supp. 290 (W.D. N.Y. 1972), judgment  
rev'd on other grounds, 413 U.S. 405, 93 S. Ct. 2507, 37 L. Ed. 2d 688 (1973).
- 3 Mass.—*Com. v. Pouliot*, 292 Mass. 229, 198 N.E. 256 (1935).  
N.Y.—*Ballentine v. Sugarman*, 74 Misc. 2d 267, 344 N.Y.S.2d 39 (Sup 1973), judgment aff'd, 43 A.D.2d  
815, 350 N.Y.S.2d 1000 (1st Dep't 1973).
- 4 U.S.—*Berry v. City of Portsmouth, Virginia*, 562 F.2d 307 (4th Cir. 1977).

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## 16A C.J.S. Constitutional Law § 812

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### Constitutional Law

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#### IX. Personal, Civil, and Political Rights and Freedoms

##### C. Personal Liberty

##### 4. Involuntary Servitude

##### b. Particular Applications

## § 812. Other factual applications of law against involuntary servitude

[Topic Summary](#) | [References](#) | [Correlation Table](#)

### West's Key Number Digest

West's Key Number Digest, [Human Trafficking and Slavery](#)  3, 4, 5(1), 13, 14, 15(1) to 15(4), 15(9), 152

**The courts have adjudicated claimed violations of the constitutional prohibition against involuntary servitude in a variety of factual contexts.**

The federal government may require a person detained by the Immigration and Naturalization Service to perform housekeeping tasks without violating the prohibition of involuntary servitude.<sup>1</sup> However, the victim of a criminal scheme to obtain forced labor and to harbor an alien fugitive for private financial gain stated a direct cause of action against a family that perpetrated a scheme for violation of her Thirteenth Amendment right not to be subjected to involuntary servitude by alleging that the family kept the victim in their home forced her to perform uncompensated labor, concealed her presence from others, cut off her access to outside world, and threatened her in various ways in order to deter her from attempting to leave or report her condition to the authorities.<sup>2</sup>

The provision of a preliminary injunction requiring a majority shareholder to continue to serve as president of a corporation violates the provision of the Thirteenth Amendment which prohibits slavery and involuntary servitude, except as a punishment for crime, where noncompliance will subject the majority shareholder to a legal sanction for contempt of court.<sup>3</sup>

Gestational surrogacy contracts do not run afoul of constitutional prohibitions on involuntary servitude.<sup>4</sup>

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Footnotes

- 1 U.S.—[Channer v. Hall](#), 112 F.3d 214 (5th Cir. 1997).
- 2 U.S.—[Martinez v. Calimlim](#), 651 F. Supp. 2d 852 (E.D. Wis. 2009).
- 3 Ohio—[Franks v. Rankin](#), 2012-Ohio-1920, 2012 WL 1531031 (Ohio Ct. App. 10th Dist. Franklin County 2012).
- 4 Cal.—[Johnson v. Calvert](#), 5 Cal. 4th 84, 19 Cal. Rptr. 2d 494, 851 P.2d 776 (1993).

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## 16A C.J.S. Constitutional Law § 832

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### Constitutional Law

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### PART III. Overview of Protected Personal Rights and Freedoms; Police Power

#### IX. Personal, Civil, and Political Rights and Freedoms

##### C. Personal Liberty

##### 7. Liberty to Choose Occupation

##### a. In General

## § 832. Liberty to pursue lawful occupation or business, generally

[Topic Summary](#) | [References](#) | [Correlation Table](#)

### West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#)  1114

**Everyone has the right to work and earn a living by any lawful calling and to pursue any legitimate trade, occupation, career, business, or profession.**

Everyone has the right to work and earn a living<sup>1</sup> by any lawful calling<sup>2</sup> and to pursue any legitimate trade, occupation, career, business, or profession<sup>3</sup> for which the individual is trained<sup>4</sup> or best suited.<sup>5</sup> This is a valuable,<sup>6</sup> inherent,<sup>7</sup> natural,<sup>8</sup> and inalienable<sup>9</sup> right and is fully protected by the laws and courts.<sup>10</sup> It is protected by the Federal Constitution and by various state constitutions.<sup>11</sup> Some courts have said that the right is fundamental<sup>12</sup> because it is a right without which other constitutionally guaranteed rights would have little meaning.<sup>13</sup> Others have said that it is not fundamental<sup>14</sup> and that an infringement of the right is therefore subject to the rational relationship test<sup>15</sup> and is not subject to strict judicial scrutiny.<sup>16</sup> Where the right to pursue employment is considered a fundamental one, a state must have a compelling interest in limiting the right.<sup>17</sup>

The constitutions sometimes expressly guarantee the right of an individual to engage in a lawful occupation, but in the absence of a specific guaranty, the right is embraced within the constitutional guaranties of life,<sup>18</sup> liberty,<sup>19</sup> property,<sup>20</sup> and the pursuit of happiness.<sup>21</sup> Also, the right to employment has been recognized as a part of the right to dignity protected under the constitution.<sup>22</sup>

Statutory enactments must be construed, if possible, so as to avoid infringing on the right.<sup>23</sup>

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#### Footnotes

- 1 U.S.—*Williams v. U.S.*, 541 F. Supp. 1187, 64 A.L.R. Fed. 479 (E.D. N.C. 1982).  
Okla.—*Priddy v. City of Tulsa*, 1994 OK CR 63, 882 P.2d 81 (Okla. Crim. App. 1994).  
Va.—*McWhorter v. Com.*, 191 Va. 857, 63 S.E.2d 20 (1951).
- 2 Cal.—*Conservatorship of Valerie N.*, 40 Cal. 3d 143, 219 Cal. Rptr. 387, 707 P.2d 760 (1985).  
Iowa—*Green v. Shama*, 217 N.W.2d 547 (Iowa 1974).  
Mo.—*State ex rel. Lipps v. City of Cape Girardeau*, 507 S.W.2d 376 (Mo. 1974).
- 3 U.S.—*Acanfora v. Board of Ed. of Montgomery County*, 359 F. Supp. 843 (D. Md. 1973), judgment aff'd, 491 F.2d 498 (4th Cir. 1974).  
Alaska—*Commercial Fisheries Entry Commission v. Apokedak*, 606 P.2d 1255 (Alaska 1980).  
Ill.—*Millikan v. Jensen*, 4 Ill. App. 3d 580, 281 N.E.2d 401 (3d Dist. 1972).  
Iowa—*Green v. Shama*, 217 N.W.2d 547 (Iowa 1974).  
Md.—*Maryland State Bd. of Barber Examiners v. Kuhn*, 270 Md. 496, 312 A.2d 216 (1973).  
Mo.—*State ex rel. Lipps v. City of Cape Girardeau*, 507 S.W.2d 376 (Mo. 1974).  
Mont.—*Wadsworth v. State*, 275 Mont. 287, 911 P.2d 1165 (1996).  
**Profession of one's own choosing**  
U.S.—*Perry v. F.B.I.*, 759 F.2d 1271, 79 A.L.R. Fed. 563 (7th Cir. 1985), on reh'g, 781 F.2d 1294 (7th Cir. 1986).
- 4 Ill.—*Scheffel & Co., P.C. v. Fessler*, 356 Ill. App. 3d 308, 292 Ill. Dec. 854, 827 N.E.2d 1 (5th Dist. 2005).
- 5 U.S.—*Del Monte Fresh Produce, N.A., Inc. v. Chiquita Brands Intern. Inc.*, 616 F. Supp. 2d 805 (N.D. Ill. 2009), on reconsideration in part, (May 13, 2009).
- 6 Ga.—*Baranan v. State Bd. of Nursing Home Administrators*, 143 Ga. App. 605, 239 S.E.2d 533 (1977).
- 7 Fla.—*City of Miami Beach v. Austin Burke, Inc.*, 185 So. 2d 720 (Fla. 3d DCA 1966).  
Md.—*Ruhl v. F. A. Bartlett Tree Expert Co.*, 245 Md. 118, 225 A.2d 288 (1967).
- 8 Colo.—*City and County of Denver v. Nielson*, 194 Colo. 407, 572 P.2d 484 (1977).
- 9 Fla.—*Lee v. Delmar*, 66 So. 2d 252 (Fla. 1953).  
Ill.—*Lyon v. Department of Children and Family Services*, 209 Ill. 2d 264, 282 Ill. Dec. 799, 807 N.E.2d 423, 187 Ed. Law Rep. 726 (2004).  
Ind.—*Kirtley v. State*, 227 Ind. 175, 84 N.E.2d 712 (1949).  
Ky.—*City of Louisville v. Sebree*, 308 Ky. 420, 214 S.W.2d 248 (1948).  
Or.—*Christian v. La Forge*, 194 Or. 450, 242 P.2d 797 (1952).  
Pa.—*Secretary of Revenue v. John's Vending Corp.*, 453 Pa. 488, 309 A.2d 358 (1973).
- 10 Ala.—*State v. Polakow's Realty Experts*, 243 Ala. 441, 10 So. 2d 461 (1942).  
Tenn.—*Nashville Memorial Hospital, Inc. v. Binkley*, 534 S.W.2d 318 (Tenn. 1976).
- 11 U.S.—*O'Donnell v. Barry*, 148 F.3d 1126 (D.C. Cir. 1998); *Kafka v. Hagener*, 176 F. Supp. 2d 1037 (D. Mont. 2001).  
Ariz.—*Holmes v. Hoemako Hospital*, 117 Ariz. 403, 573 P.2d 477, 7 A.L.R.4th 1231 (1977).  
Colo.—*City and County of Denver v. Nielson*, 194 Colo. 407, 572 P.2d 484 (1977).  
Fla.—*Fraternal Order of Police, Metropolitan Dade County, Lodge No. 6 v. Department of State*, 392 So. 2d 1296 (Fla. 1980).  
Ga.—*Baranan v. State Bd. of Nursing Home Administrators*, 143 Ga. App. 605, 239 S.E.2d 533 (1977).  
Ill.—*Lyon v. Department of Children and Family Services*, 209 Ill. 2d 264, 282 Ill. Dec. 799, 807 N.E.2d 423, 187 Ed. Law Rep. 726 (2004).

N.C.—*Poor Richard's, Inc. v. Stone*, 86 N.C. App. 137, 356 S.E.2d 828 (1987), decision rev'd on other grounds, 322 N.C. 61, 366 S.E.2d 697 (1988).

**Fourteenth Amendment to Federal Constitution**

Ky.—*Akers v. Floyd County Fiscal Court*, 556 S.W.2d 146 (Ky. 1977).

Md.—*Massage Parlors, Inc. v. Mayor and City Council of Baltimore*, 284 Md. 490, 398 A.2d 52 (1979).

12 U.S.—*Rivera-Cartagena v. Wal-Mart Puerto Rico, Inc.*, 802 F. Supp. 2d 324 (D.P.R. 2011).

Cal.—*Lone Star Sec. & Video, Inc. v. Bureau of Sec. and Investigative Services*, 209 Cal. App. 4th 445, 147 Cal. Rptr. 3d 173 (2d Dist. 2012).

13 Mont.—*Montana Cannabis Industry Ass'n v. State*, 2012 MT 201, 366 Mont. 224, 286 P.3d 1161 (2012).

14 Pa.—*Driscoll v. Corbett*, 620 Pa. 494, 69 A.3d 197 (2013).

Tex.—*Mauldin v. Texas State Bd. of Plumbing Examiners*, 94 S.W.3d 867 (Tex. App. Austin 2002).

15 N.C.—*Sanders v. State Personnel Com'n*, 197 N.C. App. 314, 677 S.E.2d 182 (2009).

Wash.—*Amunrud v. Board of Appeals*, 158 Wash. 2d 208, 143 P.3d 571, 30 A.L.R.6th 775 (2006).

§ 1876.

16 U.S.—*Massachusetts Bd. of Retirement v. Murgia*, 427 U.S. 307, 96 S. Ct. 2562, 49 L. Ed. 2d 520 (1976).

Wash.—*Amunrud v. Board of Appeals*, 158 Wash. 2d 208, 143 P.3d 571, 30 A.L.R.6th 775 (2006).

17 **Outside employment**

The State had no compelling interest in violating a state employee's fundamental right to pursue employment by adopting a rule restricting the ability of Department of Revenue real estate appraisers from pursuing certain outside employment; the rule was adopted to avoid the appearance of impropriety, but the Department had received no complaints about the appearance of impropriety.

Mont.—*Wadsworth v. State*, 275 Mont. 287, 911 P.2d 1165 (1996).

18 U.S.—*Van Zandt v. McKee*, 202 F.2d 490 (5th Cir. 1953).

Ill.—*Du Page County v. Henderson*, 402 Ill. 179, 83 N.E.2d 720 (1949).

Ky.—*Southern Linen Supply Co. v. City of Hazard*, 286 Ky. 626, 151 S.W.2d 758 (1941).

19 U.S.—*Burns v. Brinkley*, 933 F. Supp. 528 (E.D. N.C. 1996).

Cal.—*Harriman v. City of Beverly Hills*, 275 Cal. App. 2d 918, 80 Cal. Rptr. 426, 35 A.L.R.3d 1421 (2d Dist. 1969).

Idaho—*State v. Maxfield*, 98 Idaho 356, 564 P.2d 968 (1977).

Ill.—*People ex rel. Sherman v. Cryns*, 203 Ill. 2d 264, 271 Ill. Dec. 881, 786 N.E.2d 139 (2003).

Mich.—*Stockler v. State, Dept. of Treasury*, 75 Mich. App. 640, 255 N.W.2d 718 (1977).

**Label of infamy**

The liberty interest protected against infringement at the hands of the government includes the interest an individual has in being free to practice his or her profession without the burden of an unjustified label of infamy.

U.S.—*Stretten v. Wadsworth Veterans Hospital*, 537 F.2d 361 (9th Cir. 1976).

20 Cal.—*Chrysler Corp. v. New Motor Vehicle Bd.*, 89 Cal. App. 3d 1034, 153 Cal. Rptr. 135 (3d Dist. 1979).

Ill.—*People ex rel. Sherman v. Cryns*, 203 Ill. 2d 264, 271 Ill. Dec. 881, 786 N.E.2d 139 (2003).

La.—*Louisiana Bd. of Examiners in Watchmaking v. Morrow*, 188 So. 2d 160 (La. Ct. App. 4th Cir. 1966).

N.C.—*Poor Richard's, Inc. v. Stone*, 86 N.C. App. 137, 356 S.E.2d 828 (1987), decision rev'd on other grounds, 322 N.C. 61, 366 S.E.2d 697 (1988).

Utah—*Stone v. Department of Registration*, 567 P.2d 1115 (Utah 1977).

21 U.S.—*Butchers' Union Slaughter-House & Live-Stock Landing Co. v. Crescent City Live-Stock Landing & Slaughter-House Co.*, 111 U.S. 746, 4 S. Ct. 652, 28 L. Ed. 585 (1884).

22 U.S.—*Rivera-Cartagena v. Wal-Mart Puerto Rico, Inc.*, 802 F. Supp. 2d 324 (D.P.R. 2011).

23 Ill.—*Meadowmoor Dairies v. Milk Wagon Drivers' Union of Chicago*, No. 753, 371 Ill. 377, 21 N.E.2d 308 (1939), judgment aff'd, 312 U.S. 287, 61 S. Ct. 552, 85 L. Ed. 836, 132 A.L.R. 1200 (1941).

## 16A C.J.S. Constitutional Law § 833

Corpus Juris Secundum | June 2021 Update

### Constitutional Law

Francis C. Amendola, J.D.; Joseph Bassano, J.D.; John Bourdeau, J.D.; M. Elaine Buccieri, J.D.; James Buchwalter, J.D.; Michael N. Giuliano, J.D.; Lonnie E. Griffith, Jr., J.D.; Eleanor L. Grossman, J.D., of the staff of the National Legal Research Group, Inc.; Jill Gustafson, J.D.; Glenda K. Harnad, J.D.; Alan J. Jacobs, J.D.; John Kimpflen, J.D.; Amy L. Kruse, J.D.; Stephen Lease, J.D.; Sonja Larsen, J.D.; Robert B. McKinney, J.D., of the staff of the National Legal Research Group, Inc.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; Thomas Muskus, J.D.; Sally J.T. Necheles, J.D., LL.M.; Karl Oakes, J.D. and Eric C. Surette, J.D.

### PART III. Overview of Protected Personal Rights and Freedoms; Police Power

#### IX. Personal, Civil, and Political Rights and Freedoms

##### C. Personal Liberty

##### 7. Liberty to Choose Occupation

##### a. In General

## § 833. Extent and incidents of liberty to pursue lawful occupation or business

[Topic Summary](#) | [References](#) | [Correlation Table](#)

### West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#)  1114

**The constitutional right to engage in any lawful private business or occupation carries with it the making of contracts and the adoption of the various means that are usually employed to encourage trade and to extend the market for goods.**

The constitutional right to engage in any lawful private business or occupation carries with it the right to make contracts<sup>1</sup> and the adoption of the various means that are usually employed to encourage trade and to extend the market for goods.<sup>2</sup> The constitutional guaranty includes the right to discontinue a business,<sup>3</sup> the freedom to take advantage of other employment opportunities,<sup>4</sup> and the right, after resigning from employment, to go into business in competition with a former employer.<sup>5</sup>

In the absence of racial discrimination,<sup>6</sup> the right does not include the right to work for any particular individual or organization without the individual or organization's consent,<sup>7</sup> and the loss of a job does not amount to a deprivation of liberty as long as the former employee remains free to seek alternative employment.<sup>8</sup> A person has no right to pursue an unlawful business,<sup>9</sup> to work

illegally,<sup>10</sup> or to conduct a lawful enterprise in an illegal or unlawful manner.<sup>11</sup> There is no constitutional right to proportional racial representation in employment<sup>12</sup> or any guaranty that occupations will be financially profitable.<sup>13</sup>

A unilateral expectancy of continuing employment cannot form the basis of a property interest which is subject to constitutional protection.<sup>14</sup> Thus, the mere failure to rehire an employee without restricting his or her opportunity to search for other employment does not reach constitutional proportions,<sup>15</sup> and the mere fact that a particular individual can no longer engage in a certain occupation does not give rise to the conclusion that the mandate causing that fact is unconstitutional.<sup>16</sup>

In some jurisdictions, the constitutional guaranty prohibits individual interference as well as legislative infringement.<sup>17</sup> It has been said that the right to work, either in employment or independent business, is protected in some degree against arbitrary action by private organizations, including employers<sup>18</sup> and labor unions.<sup>19</sup> It has also been said, however, that the right to pursue a chosen profession is not protected against private infringement.<sup>20</sup>

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## Footnotes

- 1 Cal.—*Equitable Savings & Loan Ass'n v. Superior Court*, 230 P.2d 119 (Cal. App. 2d Dist. 1951), certified question accepted, (Aug. 16, 1951).  
Mass.—*Merit Oil Co. v. Director of Division of Necessaries of Life*, 319 Mass. 301, 65 N.E.2d 529 (1946) (rejected on other grounds by, *State v. Redman Petroleum Corp.*, 77 Nev. 163, 360 P.2d 842 (1961)).  
As to liberty to contract, see §§ 823 to 831.
- 2 **Advertising and solicitation of customers**  
Mass.—*Merit Oil Co. v. Director of Division of Necessaries of Life*, 319 Mass. 301, 65 N.E.2d 529 (1946) (rejected on other grounds by, *State v. Redman Petroleum Corp.*, 77 Nev. 163, 360 P.2d 842 (1961)).
- 3 N.Y.—*Friedstrass Co. v. Livingston*, 16 Misc. 2d 121, 185 N.Y.S.2d 39 (Sup 1959), *aff'd*, 8 A.D.2d 780, 187 N.Y.S.2d 977 (1st Dep't 1959).
- 4 U.S.—*Calvin v. Rupp*, 471 F.2d 1346 (8th Cir. 1973).
- 5 Tex.—*Gaal v. BASF Wyandotte Corp.*, 533 S.W.2d 152 (Tex. Civ. App. Houston 14th Dist. 1976).
- 6 U.S.—*Strother v. Southern California Permanente Medical Group*, 79 F.3d 859 (9th Cir. 1996), as amended on denial of reh'g, (Apr. 22, 1996) and as amended on denial of reh'g, (June 3, 1996) (California law).
- 7 U.S.—*Van Zandt v. McKee*, 202 F.2d 490 (5th Cir. 1953); *Keys v. Continental Illinois Nat. Bank & Trust Co. of Chicago*, 357 F. Supp. 376 (N.D. Ill. 1973).  
Cal.—*Graham v. Kirkwood Meadows Public Util. Dist.*, 21 Cal. App. 4th 1631, 26 Cal. Rptr. 2d 793 (3d Dist. 1994).  
Mont.—*Wadsworth v. State*, 275 Mont. 287, 911 P.2d 1165 (1996).  
N.J.—*Spalt v. New Jersey Dept. of Environmental Protection*, 237 N.J. Super. 206, 567 A.2d 264 (App. Div. 1989).  
**State employee**  
A state employee has no property interest in a particular job.  
Mont.—*Wadsworth v. State*, 275 Mont. 287, 911 P.2d 1165 (1996).  
**Blacklisting**  
An employee's right to pursue his or her chosen occupation is infringed only if the circumstances of discharge, at least if they were publicly stated, had the effect of blacklisting the employee from employment in comparable jobs.  
U.S.—*Trejo v. Shoben*, 319 F.3d 878, 173 Ed. Law Rep. 724 (7th Cir. 2003).
- 8 U.S.—*Long Grove Country Club Estates, Inc. v. Village of Long Grove*, 693 F. Supp. 640 (N.D. Ill. 1988).
- 9 N.Y.—*People v. Zinke*, 170 Misc. 332, 10 N.Y.S.2d 313 (County Ct. 1939).  
**Taking of bets**  
Fla.—*Zuppari v. State*, 367 So. 2d 601 (Fla. 1978).

- 10 N.J.—*Bastas v. Board of Review in Dept. of Labor and Industry*, 155 N.J. Super. 312, 382 A.2d 923 (App. Div. 1978).
- 11 N.Y.—*People v. Zinke*, 170 Misc. 332, 10 N.Y.S.2d 313 (County Ct. 1939).
- 12 U.S.—*Mims v. Wilson*, 514 F.2d 106 (5th Cir. 1975).
- 13 Ky.—*Akers v. Floyd County Fiscal Court*, 556 S.W.2d 146 (Ky. 1977).
- 14 U.S.—*Ducorbier v. Board of Sup'rs of Louisiana State University*, 386 F. Supp. 202 (E.D. La. 1974); *Sheets v. Stanley Community School Dist. No. 2*, 413 F. Supp. 350 (D.N.D. 1975), judgment aff'd, 532 F.2d 111 (8th Cir. 1976).
- 15 U.S.—*Roane v. Callisburg Independent School Dist.*, 511 F.2d 633 (5th Cir. 1975); *Sheets v. Stanley Community School Dist. No. 2*, 413 F. Supp. 350 (D.N.D. 1975), judgment aff'd, 532 F.2d 111 (8th Cir. 1976).
- 16 N.Y.—*Ribotsky v. Lupkin*, 114 Misc. 2d 913, 452 N.Y.S.2d 806 (Sup 1982).
- 17 Neb.—*Brisbin v. E. L. Oliver Lodge No. 335 of Broth. of Ry. Clerks*, 134 Neb. 517, 279 N.W. 277 (1938).  
N.J.—*Cameron v. International Alliance of Theatrical Stage Emp. and Moving Picture Operators of U. S. and Canada, Local Union No. 384, of Hudson County*, 118 N.J. Eq. 11, 176 A. 692, 97 A.L.R. 594 (Ct. Err. & App. 1935).  
Pa.—*Erdman v. Mitchell*, 207 Pa. 79, 56 A. 327 (1903).
- 18 U.S.—*Strother v. Southern California Permanente Medical Group*, 79 F.3d 859 (9th Cir. 1996), as amended on denial of reh'g, (Apr. 22, 1996) and as amended on denial of reh'g, (June 3, 1996) (California law).
- 19 Cal.—*Bautista v. Jones*, 25 Cal. 2d 746, 155 P.2d 343 (1944).  
N.Y.—*Wilson v. Hacker*, 200 Misc. 124, 101 N.Y.S.2d 461 (Sup 1950).  
Ohio—*Seligman v. Toledo Moving Pictures Operators Union, Local 228*, 88 Ohio App. 137, 44 Ohio Op. 172, 98 N.E.2d 54 (6th Dist. Lucas County 1947).
- 20 U.S.—*Tilton v. Richardson*, 6 F.3d 683 (10th Cir. 1993).  
Alaska—*Spence v. Southeastern Alaska Pilots' Ass'n*, 789 F. Supp. 1014 (D. Alaska 1992).

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## 16A C.J.S. Constitutional Law § 834

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### Constitutional Law

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### PART III. Overview of Protected Personal Rights and Freedoms; Police Power

#### IX. Personal, Civil, and Political Rights and Freedoms

##### C. Personal Liberty

##### 7. Liberty to Choose Occupation

##### a. In General

## § 834. Arbitrary governmental interference in pursuit of lawful occupation or business

[Topic Summary](#) | [References](#) | [Correlation Table](#)

### West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#)  1114, 1115

**The right to engage in a lawful business or occupation is protected against arbitrary or unreasonable governmental interference under the federal and state constitutions.**

The right to engage in a lawful business or occupation is protected against arbitrary or unreasonable governmental interference<sup>1</sup> under the federal<sup>2</sup> and state<sup>3</sup> constitutions. The legislature may not, under the guise of protecting the public interest, arbitrarily interfere with private business,<sup>4</sup> prohibit lawful occupations,<sup>5</sup> or impose unreasonable and unnecessary restrictions on them.<sup>6</sup>

For one who is qualified, the pursuit of a business or occupation is a right<sup>7</sup> and not a matter of the State's grace or favor<sup>8</sup> or a privilege subject to withdrawal or denial at the whim of the State.<sup>9</sup> The State may not, through regulation, deprive a person of, or infringe upon, the right to pursue a lawful business or occupation<sup>10</sup> unless the regulation is reasonable<sup>11</sup> or reasonably necessary to promote the public order, safety, health, morals, and welfare.<sup>12</sup> The regulation must have a definite, rational, reasonable

relationship to the legitimate state interest sought to be protected<sup>13</sup> and must bear a relation to the calling or profession,<sup>14</sup> and compliance must be reasonably attainable.<sup>15</sup>

Although a state may have the power to exclude certain corporations from the state or to take over an entire area of business and leave no part for private enterprise, a state may not condition a foreign corporation's right to do business on its surrender of constitutional rights.<sup>16</sup>

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## Footnotes

- 1 U.S.—*Birkenfield v. U.S.*, 369 F.2d 491 (3d Cir. 1966).  
 Cal.—*Robins v. Los Angeles County*, 248 Cal. App. 2d 1, 56 Cal. Rptr. 853 (2d Dist. 1966).  
 Colo.—*DeMarco v. Colorado Ltd. Gaming Control Com'n*, 855 P.2d 23 (Colo. App. 1993).  
 N.J.—*Lane Distributors v. Tilton*, 7 N.J. 349, 81 A.2d 786 (1951).  
**At-will employees**  
 At-will employees are protected from outside interference in their employment, and this right provides a constitutional cause of action when a government agent unlawfully interferes with the employment relation.  
 Haw.—*Minton v. Quintal*, 131 Haw. 167, 317 P.3d 1 (2013), as corrected, (Dec. 27, 2013).
- 2 N.Y.—*People v. Dobbs Ferry Medical Pavillion, Inc.*, 40 A.D.2d 324, 340 N.Y.S.2d 108 (2d Dep't 1973),  
 order aff'd, 33 N.Y.2d 584, 347 N.Y.S.2d 452, 301 N.E.2d 435 (1973).
- 3 N.C.—*North Carolina Real Estate Licensing Bd. v. Aikens*, 31 N.C. App. 8, 228 S.E.2d 493 (1976).  
**As within liberty of persons**  
 Cal.—*Harriman v. City of Beverly Hills*, 275 Cal. App. 2d 918, 80 Cal. Rptr. 426, 35 A.L.R.3d 1421 (2d Dist. 1969).  
**Guaranteed by fundamental provisions**  
 The constitutional provision declaring that among the inalienable rights of people are life, liberty, enjoyment of fruits of their own labor, and pursuit of happiness together with the constitutional provision declaring that no person shall be deprived of life, liberty, or property but by law of land guarantee the right to pursue ordinary and simple occupations free from governmental regulation.  
 N.C.—*North Carolina Real Estate Licensing Bd. v. Aikens*, 31 N.C. App. 8, 228 S.E.2d 493 (1976).
- 4 Ill.—*Rocking H Stables, Inc. v. Village of Norridge*, 106 Ill. App. 2d 179, 245 N.E.2d 601 (1st Dist. 1969).  
 N.C.—*Cheek v. City of Charlotte*, 273 N.C. 293, 160 S.E.2d 18 (1968).  
 Pa.—*State Bd. of Podiatry Examiners v. Lerner*, 213 Pa. Super. 63, 245 A.2d 669 (1968).
- 5 Cal.—*Purdy and Fitzpatrick v. State*, 71 Cal. 2d 566, 79 Cal. Rptr. 77, 456 P.2d 645, 38 A.L.R.3d 1194 (1969).  
 Iowa—*Pierce v. Incorporated Town of La Porte City*, 259 Iowa 1120, 146 N.W.2d 907 (1966).
- 6 Iowa—*Pierce v. Incorporated Town of La Porte City*, 259 Iowa 1120, 146 N.W.2d 907 (1966).  
 Mass.—*Jewel Companies, Inc. v. Town of Burlington*, 365 Mass. 274, 311 N.E.2d 539 (1974).  
 N.C.—*Cheek v. City of Charlotte*, 273 N.C. 293, 160 S.E.2d 18 (1968).
- 7 Colo.—*People v. Taylor*, 189 Colo. 202, 540 P.2d 320 (1975).  
 Nev.—*Flanders v. State, Dept. of Commerce, Real Estate Division*, 87 Nev. 303, 486 P.2d 499 (1971).
- 8 Nev.—*Flanders v. State, Dept. of Commerce, Real Estate Division*, 87 Nev. 303, 486 P.2d 499 (1971).
- 9 Alaska—*Frontier Saloon, Inc. v. Alcoholic Beverage Control Bd.*, 524 P.2d 657 (Alaska 1974).
- 10 N.Y.—*Gannett Co. v. City of Rochester*, 69 Misc. 2d 619, 330 N.Y.S.2d 648 (Sup 1972).  
 Pa.—*Secretary of Revenue v. John's Vending Corp.*, 453 Pa. 488, 309 A.2d 358 (1973).
- 11 N.D.—*Arneson v. Olson*, 270 N.W.2d 125 (N.D. 1978) (rejected on other grounds by, *Gourley ex rel. Gourley v. Nebraska Methodist Health System, Inc.*, 265 Neb. 918, 663 N.W.2d 43 (2003)).  
**As applicable to all persons in same kind of business**  
 Colo.—*City and County of Denver v. Nielson*, 194 Colo. 407, 572 P.2d 484 (1977).
- 12 Cal.—*Harriman v. City of Beverly Hills*, 275 Cal. App. 2d 918, 80 Cal. Rptr. 426, 35 A.L.R.3d 1421 (2d Dist. 1969).

Idaho—*State v. Maxfield*, 98 Idaho 356, 564 P.2d 968 (1977).  
 Ill.—*Rocking H Stables, Inc. v. Village of Norridge*, 106 Ill. App. 2d 179, 245 N.E.2d 601 (1st Dist. 1969).  
 Iowa—*MRM, Inc. v. City of Davenport*, 290 N.W.2d 338 (Iowa 1980).  
 Ky.—*McGuffey v. Hall*, 557 S.W.2d 401 (Ky. 1977).  
 Mass.—*Com. v. Henry's Drywall Co., Inc.*, 366 Mass. 539, 320 N.E.2d 911 (1974).  
 N.Y.—*Gannett Co. v. City of Rochester*, 69 Misc. 2d 619, 330 N.Y.S.2d 648 (Sup 1972).  
 N.C.—*In re Certificate of Need for Aston Park Hospital, Inc.*, 282 N.C. 542, 193 S.E.2d 729, 61 A.L.R.3d 268 (1973).  
 N.D.—*Arneson v. Olson*, 270 N.W.2d 125 (N.D. 1978) (rejected on other grounds by, *Gourley ex rel. Gourley v. Nebraska Methodist Health System, Inc.*, 265 Neb. 918, 663 N.W.2d 43 (2003)).  
 Pa.—*Secretary of Revenue v. John's Vending Corp.*, 453 Pa. 488, 309 A.2d 358 (1973).

**Determining reasonableness**

The reasonableness of the exercise of police power is to be determined by the court and is to be based on human judgment, natural justice, and common sense in view of all the facts and circumstances.

- 13 N.C.—*Butler v. Peters*, 52 N.C. App. 357, 278 S.E.2d 283 (1981).  
 Colo.—*People v. Taylor*, 189 Colo. 202, 540 P.2d 320 (1975).  
 Ill.—*Pozner v. Mauck*, 73 Ill. 2d 250, 22 Ill. Dec. 727, 383 N.E.2d 203 (1978).  
 Iowa—*MRM, Inc. v. City of Davenport*, 290 N.W.2d 338 (Iowa 1980).  
 Ky.—*McGuffey v. Hall*, 557 S.W.2d 401 (Ky. 1977).  
 Mass.—*Jewel Companies, Inc. v. Town of Burlington*, 365 Mass. 274, 311 N.E.2d 539 (1974).  
 Pa.—*Secretary of Revenue v. John's Vending Corp.*, 453 Pa. 488, 309 A.2d 358 (1973).  
 14 U.S.—*Pharmaceutical Soc. of State of New York, Inc. v. Lefkowitz*, 454 F. Supp. 1175 (S.D. N.Y. 1978),  
 aff'd, 586 F.2d 953 (2d Cir. 1978).  
 15 U.S.—*Pharmaceutical Soc. of State of New York, Inc. v. Lefkowitz*, 454 F. Supp. 1175 (S.D. N.Y. 1978),  
 aff'd, 586 F.2d 953 (2d Cir. 1978).  
 16 U.S.—*Insurers' Action Council, Inc. v. Markman*, 490 F. Supp. 921 (D. Minn. 1980), judgment aff'd, 653  
 F.2d 344 (8th Cir. 1981).

## 16A C.J.S. Constitutional Law § 835

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### Constitutional Law

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### PART III. Overview of Protected Personal Rights and Freedoms; Police Power

#### IX. Personal, Civil, and Political Rights and Freedoms

##### C. Personal Liberty

##### 7. Liberty to Choose Occupation

##### a. In General

## § 835. Public employment

[Topic Summary](#) | [References](#) | [Correlation Table](#)

### West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#)  1114, 1115

**In general, there is no constitutional right to public employment.**

It is generally held that no person possesses a constitutional right to public employment.<sup>1</sup> The government may, as a condition of employment, require compliance with any reasonable and nondiscriminatory restriction upon the activities of its employees, in the exercise of rights to which government employees as citizens might otherwise be constitutionally entitled,<sup>2</sup> and such conditions do not violate the constitutional liberty to choose an occupation.<sup>3</sup> Thus, public employees may be prohibited from engaging in certain activities,<sup>4</sup> such as seeking public or political office.<sup>5</sup>

However, public employment may not be conditioned upon the surrender of constitutional rights.<sup>6</sup> Once hired, a public employee achieves status and benefits which the employee is entitled to have protected against unjust or unlawful deprivation.<sup>7</sup>

The imposition of a mandatory retirement age does not abridge a public employee's right to engage in a common occupation.<sup>8</sup>

Footnotes

- 1 U.S.—*McDowell v. State of Tex.*, 465 F.2d 1342 (5th Cir. 1971); *Buckley v. Coyle Public School System*, 476 F.2d 92 (10th Cir. 1973); *Williams v. U.S.*, 541 F. Supp. 1187, 64 A.L.R. Fed. 479 (E.D. N.C. 1982).  
Fla.—*Headley v. Baron*, 228 So. 2d 281 (Fla. 1969) (overruled in part on other grounds by, *Lurie v. Florida State Bd. of Dentistry*, 288 So. 2d 223 (Fla. 1973)).  
Mass.—*Town of Milton v. Civil Service Commission*, 365 Mass. 368, 312 N.E.2d 188 (1974).  
**Conflict of interests**  
An agency circular precluding appointment where employment would result in a conflict of interests was not in violation of First Amendment rights.  
U.S.—*Onweiler v. U.S.*, 432 F. Supp. 1226 (D. Idaho 1977).  
**Firefighter**  
N.Y.—*Krolick v. Lowery*, 32 A.D.2d 317, 302 N.Y.S.2d 109 (1st Dep't 1969), *aff'd*, 26 N.Y.2d 723, 308 N.Y.S.2d 879, 257 N.E.2d 56 (1970).  
**Police officer**  
Cal.—*Hardy v. Stumpf*, 21 Cal. 3d 1, 145 Cal. Rptr. 176, 576 P.2d 1342 (1978).  
Mass.—*Broderick v. Police Commissioner of Boston*, 368 Mass. 33, 330 N.E.2d 199 (1975).  
2 Minn.—*Head v. Special School Dist. No. 1*, 288 Minn. 496, 182 N.W.2d 887 (1970) (overruled in part on other grounds by, *Nyhus v. Civil Service Bd.*, 305 Minn. 184, 232 N.W.2d 779 (1975)).  
3 U.S.—*Youker v. Gulley*, 536 F.2d 184 (7th Cir. 1976).  
Fla.—*Swinney v. Untreiner*, 272 So. 2d 805 (Fla. 1973).  
Pa.—*In re Prohibition of Political Activities by Court-appointed Emp.*, 473 Pa. 554, 375 A.2d 1257 (1977).  
4 **Court reporters**  
A court rule that official court reporters forego private reporting activities as a condition of their employment bore a reasonable relationship to the goal of ensuring expeditious preparation of transcripts by eliminating conflicts between reporters' official duties and outside work and avoiding any appearance of impropriety arising from a commercial relationship between litigants and official court reporters.  
U.S.—*Youker v. Gulley*, 536 F.2d 184 (7th Cir. 1976).  
**Political activities**  
Fla.—*Swinney v. Untreiner*, 272 So. 2d 805 (Fla. 1973).  
**Strikes**  
Minn.—*Head v. Special School Dist. No. 1*, 288 Minn. 496, 182 N.W.2d 887 (1970) (overruled in part on other grounds by, *Nyhus v. Civil Service Bd.*, 305 Minn. 184, 232 N.W.2d 779 (1975)).  
5 U.S.—*Newcomb v. Brennan*, 558 F.2d 825, 44 A.L.R. Fed. 297 (7th Cir. 1977); *Smith v. Ehrlich*, 430 F. Supp. 818 (D.D.C. 1976).  
Fla.—*Swinney v. Untreiner*, 272 So. 2d 805 (Fla. 1973).  
Pa.—*Com. ex rel. Specter v. Moak*, 452 Pa. 482, 307 A.2d 884 (1973).  
6 U.S.—*Donahue v. Staunton*, 471 F.2d 475 (7th Cir. 1972); *Buckley v. Coyle Public School System*, 476 F.2d 92 (10th Cir. 1973); *Feinerman v. Jones*, 356 F. Supp. 252 (M.D. Pa. 1973).  
**Rehiring**  
A decision not to rehire an individual is improper if made by reason of that person's exercise of a constitutionally protected right.  
U.S.—*Nicholson v. Board of Educ. Torrance Unified School Dist.*, 682 F.2d 858, 5 Ed. Law Rep. 733 (9th Cir. 1982).  
7 Fla.—*Headley v. Baron*, 228 So. 2d 281 (Fla. 1969) (overruled in part on other grounds by, *Lurie v. Florida State Bd. of Dentistry*, 288 So. 2d 223 (Fla. 1973)).  
**Termination proper absent injury**  
The termination of a director of conciliation pursuant to statutory authority, albeit that it is accomplished without a hearing, does not constitute a deprivation of liberty in the absence of evidence that the termination improperly injures the employee's present reputation or his freedom to take advantage of other opportunities.  
Ariz.—*White v. Superior Court In and For Pima County*, 25 Ariz. App. 438, 544 P.2d 262 (Div. 2 1975).

8 U.S.—[Armstrong v. Howell](#), 371 F. Supp. 48 (D. Neb. 1974).

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## 16A C.J.S. Constitutional Law § 836

Corpus Juris Secundum | June 2021 Update

### Constitutional Law

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### PART III. Overview of Protected Personal Rights and Freedoms; Police Power

#### IX. Personal, Civil, and Political Rights and Freedoms

##### C. Personal Liberty

##### 7. Liberty to Choose Occupation

##### a. In General

## § 836. Particular occupations

[Topic Summary](#) | [References](#) | [Correlation Table](#)

### West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#)  1117 to 1117(2)

**The rules pertaining to the liberty to choose an occupation have been applied to a variety of businesses and occupations, such as attorneys at law and physicians.**

Any limitations on the free practice of law by all persons necessarily affects the constitutional right to pursue a lawful occupation or business.<sup>1</sup> Although it has been held that the right to practice law is constitutionally protected as a property right<sup>2</sup> if the requirements of bar admission are met<sup>3</sup> and that it may not be predicated upon a relinquishment of constitutional rights,<sup>4</sup> it has also been held that there is no fundamental,<sup>5</sup> inalienable,<sup>6</sup> constitutional<sup>7</sup> right to practice law as the practice of law is a privilege, not an absolute right.<sup>8</sup> The valid exercise of the State's power to regulate and control the practice of law before the courts of the state does not constitute an unconstitutional restraint on the enjoyment of an attorney's rights.<sup>9</sup>

A physician has a fundamental right to practice his or her profession fully and capably,<sup>10</sup> but this right is not unlimited<sup>11</sup> and is subject to comprehensive regulation.<sup>12</sup> Thus, a physician does not have a constitutional right to practice in a particular hospital,

whether public<sup>13</sup> or private,<sup>14</sup> or in a public institution of medical education,<sup>15</sup> or to engage in unlimited private practice while holding a public position of employment.<sup>16</sup> A physician's right to practice his or her profession must yield to the government's paramount right to protect public health by any rational means.<sup>17</sup> Thus, a statute may require that the State be provided with a copy of every prescription written for certain dangerous drugs.<sup>18</sup>

Denturists have a fundamental right to pursue dentistry as a profession, but denturists do not have a fundamental right to practice dentistry free of all regulation.<sup>19</sup>

A chiropractor's claim of the right to pursue his or her profession through the practice of acupuncture, withdrawal of blood specimens, and advice on diet must yield to the superior right of the State to regulate the chiropractor's freedom where such regulation is required to protect the public health, safety, or welfare.<sup>20</sup>

A statute regulating who may be a pharmacist or may conduct or manage a pharmacy or drugstore does not invade any area of constitutionally protected freedom.<sup>21</sup>

A nontenured teacher has no property interest in continued employment, nor is a nontenured teacher deprived of liberty by nonrenewal of the teacher's contract.<sup>22</sup> Thus, the nonrenewal of employment of a nontenured college professor or instructor is not a deprivation of liberty in the absence of other damage foreclosing the freedom to take advantage of other employment opportunities,<sup>23</sup> and a discharged professor has no absolute constitutional right to teach in any educational institution.<sup>24</sup>

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#### Footnotes

- 1 Fla.—*Florida Bar v. Brumbaugh*, 355 So. 2d 1186 (Fla. 1978).
- 2 Pa.—*In re Shigon*, 462 Pa. 1, 329 A.2d 235 (1974).
- 3 Ill.—*Zielinski v. Schmalbeck*, 269 Ill. App. 3d 572, 207 Ill. Dec. 89, 646 N.E.2d 655, 97 Ed. Law Rep. 1127 (4th Dist. 1995).
- 4 Cal.—*Cunningham v. Superior Court*, 177 Cal. App. 3d 336, 222 Cal. Rptr. 854 (2d Dist. 1986).
- 5 U.S.—*Potter v. New Jersey Supreme Court*, 403 F. Supp. 1036 (D.N.J. 1975), *aff'd*, 546 F.2d 418 (3d Cir. 1976).
- 6 Mont.—*Petition of Morris*, 175 Mont. 456, 575 P.2d 37 (1978).
- 7 **In one's home state**  
Minn.—*Application of Hansen*, 275 N.W.2d 790 (Minn. 1978).
- 8 Tenn.—*Cox v. Huddleston*, 914 S.W.2d 501 (Tenn. Ct. App. 1995).
- 9 **Right-to-work provision**  
Requiring membership in the state bar in order to practice law does not violate a state constitution's right-to-work provision as the state bar is not a "labor union" or "labor organization" within the meaning of the provision.  
S.D.—*Matter of Chamley*, 349 N.W.2d 56 (S.D. 1984).
- Bar examination**  
Ga.—*Pace v. Smith*, 248 Ga. 728, 286 S.E.2d 18 (1982).
- 10 Cal.—*Volpicelli v. Jared Sydney Torrance Memorial Hosp.*, 109 Cal. App. 3d 242, 167 Cal. Rptr. 610 (2d Dist. 1980).
- 11 U.S.—*Gross v. University of Tennessee*, 448 F. Supp. 245 (W.D. Tenn. 1978), judgment *aff'd*, 620 F.2d 109 (6th Cir. 1980).
- Academic degree required**  
U.S.—*Oliver v. Morton*, 361 F. Supp. 1262 (N.D. Ga. 1973).
- 12 Utah—*State v. Hoffman*, 733 P.2d 502 (Utah 1987).

- 13 Ohio—*Gotsis v. Lorain Community Hospital*, 46 Ohio App. 2d 8, 75 Ohio Op. 2d 18, 345 N.E.2d 641 (9th Dist. Lorain County 1974).
- 14 Ohio—*Gotsis v. Lorain Community Hospital*, 46 Ohio App. 2d 8, 75 Ohio Op. 2d 18, 345 N.E.2d 641 (9th Dist. Lorain County 1974).
- 15 N.J.—*Grodjesk v. Jersey City Medical Center*, 135 N.J. Super. 393, 343 A.2d 489 (Ch. Div. 1975).
- 16 **Professor of medicine in state university**  
U.S.—*Gross v. University of Tennessee*, 448 F. Supp. 245 (W.D. Tenn. 1978), judgment aff'd, 620 F.2d 109 (6th Cir. 1980).  
N.Y.—*Kountz v. State University of New York*, 109 Misc. 2d 319, 437 N.Y.S.2d 868 (Sup 1981), judgment aff'd, 87 A.D.2d 605, 450 N.Y.S.2d 416 (2d Dep't 1982).
- 17 Nev.—*State ex rel. Kassabian v. State Bd. of Medical Examiners*, 68 Nev. 455, 235 P.2d 327 (1951).
- 18 **Right not impermissibly impaired**  
Statutes did not impermissibly impair physicians' right to practice medicine free from unwarranted state interference either in terms of the statutes' impact on the physicians' own procedures or with reference to patients' concern about disclosure of information; the physicians' interest in the latter concern was no different than that of the patients.  
U.S.—*Whalen v. Roe*, 429 U.S. 589, 97 S. Ct. 869, 51 L. Ed. 2d 64 (1977).
- 19 Mont.—*Wiser v. State, Dept. of Commerce*, 2006 MT 20, 331 Mont. 28, 129 P.3d 133 (2006).
- 20 Iowa—*State, ex rel. Iowa Dept. of Health v. Van Wyk*, 320 N.W.2d 599 (Iowa 1982).
- 21 N.C.—*State v. White*, 58 N.C. App. 558, 294 S.E.2d 1 (1982).
- 22 U.S.—*Sheets v. Stanley Community School Dist. No. 2*, 413 F. Supp. 350 (D.N.D. 1975), judgment aff'd, 532 F.2d 111 (8th Cir. 1976).  
As to the personal, civil, and political rights of educational faculty, generally, see § 761.
- 23 U.S.—*Kota v. Little*, 473 F.2d 1 (4th Cir. 1973).  
**Positions reserved for others**  
Nonrenewal of a college instructor's employment, in order to reserve instructors' positions for persons working on their doctorate degrees, did not as matter of law result in such a stigma that the instructor's liberty interests were infringed thereby.  
U.S.—*Ducorbier v. Board of Sup'rs of Louisiana State University*, 386 F. Supp. 202 (E.D. La. 1974).  
**First Amendment not violated**  
U.S.—*Collins v. Wolfson*, 498 F.2d 1100 (5th Cir. 1974).
- 24 U.S.—*Dougherty v. Walker*, 349 F. Supp. 629 (W.D. Mo. 1972).

## 16A C.J.S. Constitutional Law § 837

Corpus Juris Secundum | June 2021 Update

### Constitutional Law

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### PART III. Overview of Protected Personal Rights and Freedoms; Police Power

#### IX. Personal, Civil, and Political Rights and Freedoms

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##### 7. Liberty to Choose Occupation

##### b. Limitations and Restrictions

## § 837. Limitations and restrictions on liberty to pursue lawful occupation or business, generally

[Topic Summary](#) | [References](#) | [Correlation Table](#)

### West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#) 🔑 1116

**The right to engage in any legitimate trade, occupation, business, or profession is subject to a reasonable and necessary exercise of the regulatory powers of government in the public interest or welfare.**

The right to engage in any legitimate trade, occupation, business, or profession is not absolute,<sup>1</sup> unqualified,<sup>2</sup> or unrestricted<sup>3</sup> but is subject to limitation<sup>4</sup> and regulation.<sup>5</sup> The right does not include the right to conduct a business or to pursue an occupation in any manner desired,<sup>6</sup> and certain kinds of business may be prohibited<sup>7</sup> to certain individuals.<sup>8</sup>

The constitutional right to engage in any lawful business or occupation is subject to a reasonable and necessary exercise of the government's police power,<sup>9</sup> or when the regulation or restriction is essential to the protection of the public health, morals, safety, or welfare,<sup>10</sup> or to public policy.<sup>11</sup>

The right to pursue employment does not grant a right or property interest in any particular job or employment.<sup>12</sup> There is, for instance, no right to engage in the liquor business<sup>13</sup> or to operate a commercial massage parlor.<sup>14</sup> The inalienable right of every citizen to follow the common industrial occupations of life does not extend to the pursuit of professions or vocations of such nature as to require special knowledge or peculiar skill,<sup>15</sup> and such professions or vocations are, therefore, a proper subject for supervision in the interest of the public welfare.<sup>16</sup> Accordingly, the government may restrict such pursuit to a limited class<sup>17</sup> for the purpose of protecting the public from incompetency by establishing minimum standards of knowledge and acquired skills.<sup>18</sup>

The right to engage in a particular occupation is subject to legislative restrictions, such as statutory limitations on working hours,<sup>19</sup> minimum wages,<sup>20</sup> age limits for employment,<sup>21</sup> licensing requirements,<sup>22</sup> safety regulations,<sup>23</sup> and restrictions on the employment of aliens.<sup>24</sup> The right is also subject to peaceful, economic pressure by labor organizations seeking legitimate ends.<sup>25</sup>

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#### Footnotes

- 1 Pa.—*Pirillo v. Takiff*, 462 Pa. 511, 341 A.2d 896 (1975), opinion reinstated, 466 Pa. 187, 352 A.2d 11 (1975).  
Tex.—*Driggs v. City of Denison*, 420 S.W.2d 446 (Tex. Civ. App. Dallas 1967).
  - 2 Conn.—*Oppelt v. Mayo*, 26 Conn. Supp. 329, 223 A.2d 47 (Super. Ct. 1966).  
Mass.—*Com. v. Henry's Drywall Co., Inc.*, 366 Mass. 539, 320 N.E.2d 911 (1974).  
Mich.—*Belle Isle Grill Corp. v. City of Detroit*, 256 Mich. App. 463, 666 N.W.2d 271 (2003).
  - 3 U.S.—*Zwick v. Freeman*, 373 F.2d 110 (2d Cir. 1967).  
Colo.—*People ex rel. Dunbar v. Gym of America, Inc.*, 177 Colo. 97, 493 P.2d 660, 50 A.L.R.3d 992 (1972).  
Conn.—*Oppelt v. Mayo*, 26 Conn. Supp. 329, 223 A.2d 47 (Super. Ct. 1966).  
Ohio—*Midwestern College of Massotherapy v. Ohio Med. Bd.*, 102 Ohio App. 3d 17, 656 N.E.2d 963 (10th Dist. Franklin County 1995).
  - 4 U.S.—*U.S. v. Hopkins*, 927 F. Supp. 2d 1120 (D.N.M. 2013).  
Mont.—*Montana Cannabis Industry Ass'n v. State*, 2012 MT 201, 366 Mont. 224, 286 P.3d 1161 (2012).
  - 5 U.S.—*Brewer v. Wisconsin Bd. of Bar Examiners*, 270 Fed. Appx. 418 (7th Cir. 2008); *U.S. v. Hopkins*, 927 F. Supp. 2d 1120 (D.N.M. 2013).  
Mont.—*Wiser v. State, Dept. of Commerce*, 2006 MT 20, 331 Mont. 28, 129 P.3d 133 (2006).
  - 6 U.S.—*Nebbia v. People of New York*, 291 U.S. 502, 54 S. Ct. 505, 78 L. Ed. 940, 89 A.L.R. 1469 (1934);  
*Hawkins v. Agricultural Marketing Service, Dept. of Agriculture, U.S.*, 10 F.3d 1125 (5th Cir. 1993).  
Colo.—*People ex rel. Dunbar v. Gym of America, Inc.*, 177 Colo. 97, 493 P.2d 660, 50 A.L.R.3d 992 (1972).  
Ill.—*Greyhound Lines, Inc. v. City of Chicago*, 24 Ill. App. 3d 718, 321 N.E.2d 293 (1st Dist. 1974).  
Ohio—*Midwestern College of Massotherapy v. Ohio Med. Bd.*, 102 Ohio App. 3d 17, 656 N.E.2d 963 (10th Dist. Franklin County 1995).  
Wash.—*Griffith v. Department of Motor Vehicles, State of Wash.*, 23 Wash. App. 722, 598 P.2d 1377 (Div. 1 1979).
- As infringing on rights of others**  
There is no constitutional right to pursue a profession in a manner that infringes on the constitutional rights of another citizen.  
U.S.—*U.S. v. Aldawsari*, 683 F.3d 660, 82 Fed. R. Serv. 3d 1074 (5th Cir. 2012).
- 7 U.S.—*Nebbia v. People of New York*, 291 U.S. 502, 54 S. Ct. 505, 78 L. Ed. 940, 89 A.L.R. 1469 (1934).  
**Countervailing legitimate state interests**  
A statute providing that a person who fondles, or offers or agrees to fondle, the genitals of another for money or other property commits prostitution did not abridge the constitutional rights of defendant to earn living in the light of countervailing legitimate state interests justifying such application of its police powers.  
Ind.—*Owens v. State*, 424 N.E.2d 169 (Ind. Ct. App. 1981).
  - 8 N.C.—*State v. Simpson*, 25 N.C. App. 176, 212 S.E.2d 566 (1975).  
**Bar applicant receiving disability benefits**

The request of a state board of law examiners that a state bar applicant undergo a psychological fitness evaluation before licensing her to practice law was a reasonable regulation on any constitutional interest that the applicant had in pursuing her desired profession since the applicant's receipt of disability benefits in part because of chronic depression and fatigue signified that the federal government considered her unable to pursue gainful employment.

U.S.—[Brewer v. Wisconsin Bd. of Bar Examiners](#), 270 Fed. Appx. 418 (7th Cir. 2008)

#### **Prison inmate**

The right to have job of his choice was not within a convicted felon's constitutionally protected liberty, and he was entitled to relief only if his work assignment at prison was decided arbitrarily or capriciously.

U.S.—[Beatham v. Manson](#), 369 F. Supp. 783 (D. Conn. 1973).

#### **Nonresidents**

There is no constitutional right to municipal employment for those persons who elect to maintain their residences outside an employing municipality.

U.S.—[Lorenz v. Logue](#), 481 F. Supp. 173 (D. Conn. 1979), judgment aff'd, 611 F.2d 421 (2d Cir. 1979).

Pa.—[Jeske v. Upper Yoder Tp.](#), 44 Pa. Commw. 13, 403 A.2d 1010 (1979).

9 Conn.—[Elf v. Department of Public Health](#), 66 Conn. App. 410, 784 A.2d 979 (2001).

Ill.—[People ex rel. Sherman v. Cryns](#), 203 Ill. 2d 264, 271 Ill. Dec. 881, 786 N.E.2d 139 (2003).

Iowa—[MRM, Inc. v. City of Davenport](#), 290 N.W.2d 338 (Iowa 1980).

Mich.—[Belle Isle Grill Corp. v. City of Detroit](#), 256 Mich. App. 463, 666 N.W.2d 271 (2003).

N.C.—[State v. White](#), 58 N.C. App. 558, 294 S.E.2d 1 (1982).

N.D.—[Arneson v. Olson](#), 270 N.W.2d 125 (N.D. 1978) (rejected on other grounds by, [Gourley ex rel. Gourley v. Nebraska Methodist Health System, Inc.](#), 265 Neb. 918, 663 N.W.2d 43 (2003)).

Ohio—[Bouquett v. Ohio State Med. Bd.](#), 123 Ohio App. 3d 466, 704 N.E.2d 583 (10th Dist. Franklin County 1997).

10 Ill.—[People ex rel. Sherman v. Cryns](#), 203 Ill. 2d 264, 271 Ill. Dec. 881, 786 N.E.2d 139 (2003).

Iowa—[MRM, Inc. v. City of Davenport](#), 290 N.W.2d 338 (Iowa 1980).

Md.—[Massage Parlors, Inc. v. Mayor and City Council of Baltimore](#), 284 Md. 490, 398 A.2d 52 (1979).

Mass.—[Com. v. Henry's Drywall Co., Inc.](#), 366 Mass. 539, 320 N.E.2d 911 (1974).

Md.—[Linkus v. Maryland State Bd. of Heating Ventilation, Air-Conditioning and Refrigeration Contractors](#), 114 Md. App. 262, 689 A.2d 1254 (1997).

Neb.—[Gillette Dairy, Inc. v. Nebraska Dairy Products Bd.](#), 192 Neb. 89, 219 N.W.2d 214 (1974).

N.M.—[State ex rel. Stratton v. Sinks](#), 106 N.M. 213, 1987-NMCA-092, 741 P.2d 435 (Ct. App. 1987).

Pa.—[Secretary of Revenue v. John's Vending Corp.](#), 453 Pa. 488, 309 A.2d 358 (1973).

Wash.—[Griffith v. Department of Motor Vehicles, State of Wash.](#), 23 Wash. App. 722, 598 P.2d 1377 (Div. 1 1979).

#### **Vending from motorized vehicles**

A town ordinance prohibiting vending from motorized vehicles upon streets or public property within its limits did not impermissibly infringe upon the right of ice cream vendors to engage in a lawful business.

Conn.—[Blue Sky Bar, Inc. v. Town of Stratford](#), 203 Conn. 14, 523 A.2d 467 (1987).

#### **Conservation and economic purposes**

Under its police power, the State may properly limit the persons to whom it issues commercial fishing licenses for conservation and economic purposes.

Alaska—[Commercial Fisheries Entry Commission v. Apokedak](#), 606 P.2d 1255 (Alaska 1980).

#### **Superseding public need**

N.J.—[Southland Corp. v. Edison Tp.](#), 217 N.J. Super. 158, 524 A.2d 1336 (Super. Ct., L. & Ch. Div. 1986), judgment aff'd, 220 N.J. Super. 294, 531 A.2d 1361 (App. Div. 1987).

11 Ga.—[Hughes v. Reynolds](#), 223 Ga. 727, 157 S.E.2d 746 (1967).

12 U.S.—[Munn-Goins v. Board of Trustees of Bladen Community College](#), 658 F. Supp. 2d 713, 251 Ed. Law Rep. 735 (E.D. N.C. 2009), aff'd, 393 Fed. Appx. 74 (4th Cir. 2010).

#### **Selling medical marijuana**

A statutory provision that prohibited providers of marijuana products from selling medical marijuana did not substantially implicate the fundamental right to pursue employment under the state constitution; the right did not protect the right to pursue a particular job or employment, and the providers, who were generally

horticulturists, remained free to pursue horticulture work generally and were not proscribed from practicing the art of horticulture for profit.

Mont.—*Montana Cannabis Industry Ass'n v. State*, 2012 MT 201, 366 Mont. 224, 286 P.3d 1161 (2012).

Cal.—*Reece v. Alcoholic Bev. etc. Appeals Bd.*, 64 Cal. App. 3d 675, 134 Cal. Rptr. 698 (3d Dist. 1976).

Idaho—*Crazy Horse, Inc. v. Pearce*, 98 Idaho 762, 572 P.2d 865 (1977).

Ill.—*County of Cook v. Kontos*, 206 Ill. App. 3d 1085, 152 Ill. Dec. 7, 565 N.E.2d 249 (1st Dist. 1990).

Colo.—*Regency Services Corp. v. Board of County Com'rs of Adams County*, 819 P.2d 1049 (Colo. 1991).

Conn.—*Kagan v. Alander*, 44 Conn. Supp. 223, 680 A.2d 1015 (Super. Ct. 1994), *aff'd*, 42 Conn. App. 92, 677 A.2d 1391 (1996).

Miss.—*Board of Com'rs Miss. State Bar v. Collins*, 214 Miss. 782, 59 So. 2d 351 (1952).

Conn.—*Amsel v. Brooks*, 141 Conn. 288, 106 A.2d 152, 45 A.L.R.2d 1234 (1954).

#### **Deference to legislative judgment**

An individual does not possess a fundamental right to pursue occupation wherein technical complexity and intimate relationship to the public interest and welfare counsel deference to legislative judgment.

Cal.—*Hardy v. Stumpf*, 21 Cal. 3d 1, 145 Cal. Rptr. 176, 576 P.2d 1342 (1978).

Fla.—*Carbo, Inc. v. Meiklejohn*, 217 So. 2d 159 (Fla. 1st DCA 1968).

#### **Absolute right lacking**

There is no absolute right to practice a profession.

Pa.—*Rabino v. Com., State Registration Bd. for Professional Engineers*, 69 Pa. Commw. 191, 450 A.2d 773 (1982).

#### **Fitness or competence**

A statute can constitutionally bar a person from practicing a lawful profession only for reasons related to the person's fitness or competence to practice that profession.

Cal.—*Hughes v. Board of Architectural Examiners*, 17 Cal. 4th 763, 72 Cal. Rptr. 2d 624, 952 P.2d 641 (1998).

Cal.—*Bautista v. Jones*, 25 Cal. 2d 746, 155 P.2d 343 (1944).

#### **More than one job**

There is no fundamental constitutional right to two full-time jobs.

Cal.—*Baity v. Civil Service Com.*, 103 Cal. App. 3d 155, 162 Cal. Rptr. 812 (2d Dist. 1980).

Cal.—*Bautista v. Jones*, 25 Cal. 2d 746, 155 P.2d 343 (1944).

Cal.—*Bautista v. Jones*, 25 Cal. 2d 746, 155 P.2d 343 (1944).

Ark.—*Stroud v. Crow*, 199 Ark. 814, 136 S.W.2d 1025 (1940).

Cal.—*Bautista v. Jones*, 25 Cal. 2d 746, 155 P.2d 343 (1944).

Fla.—*State v. Bales*, 343 So. 2d 9 (Fla. 1977).

S.D.—*City of Sioux Falls v. Kadinger*, 75 S.D. 86, 59 N.W.2d 631 (1953).

Va.—*Kizee v. Conway*, 184 Va. 300, 35 S.E.2d 99 (1945).

Cal.—*Bautista v. Jones*, 25 Cal. 2d 746, 155 P.2d 343 (1944).

U.S.—*Pilapil v. Immigration and Naturalization Service*, 424 F.2d 6, 9 A.L.R. Fed. 915 (10th Cir. 1970).

Cal.—*Bautista v. Jones*, 25 Cal. 2d 746, 155 P.2d 343 (1944).

## 16A C.J.S. Constitutional Law § 838

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### Constitutional Law

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##### b. Limitations and Restrictions

## § 838. Sex discrimination

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### West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#) 🔑 1114

**The right to transact business in a manner not contrary to public health, safety, morals, or public policy must be preserved to citizens without sexual discrimination.**

The right to transact business in a manner not contrary to public health, safety, morals, or public policy must be preserved to citizens without discrimination.<sup>1</sup> In the absence of a justifiable reason for an employer refusing to hire females, such a refusal denies a female applicant her right to seek employment and be employed if she is otherwise qualified.<sup>2</sup> The prohibition against sex discrimination applies to private as well as state action.<sup>3</sup>

A constitution may provide that a person may not be disqualified because of sex from entering or pursuing a lawful business, vocation, or profession.<sup>4</sup> A law which generally prohibits a woman from pursuing an occupation which a man can pursue, or vice versa, conflicts with such a provision.<sup>5</sup>

However, such a constitutional provision does not prohibit the regulation of an occupation in such a way as to exclude one sex under certain justifiable circumstances.<sup>6</sup> Rather, it forbids a prohibition from the pursuit of that occupation by either sex.<sup>7</sup>

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Footnotes

- 1 Ga.—[Hughes v. Reynolds](#), 223 Ga. 727, 157 S.E.2d 746 (1967).
- 2 U.S.—[Eslinger v. Thomas](#), 340 F. Supp. 886 (D.S.C. 1972), judgment aff'd in part, rev'd in part on other grounds, 476 F.2d 225 (4th Cir. 1973) (disapproved of on other grounds by, [Supreme Court of Virginia v. Consumers Union of U. S., Inc.](#), 446 U.S. 719, 100 S. Ct. 1967, 64 L. Ed. 2d 641 (1980)).
- 3 **Under state constitution**  
Cal.—[Grinzi v. San Diego Hospice Corp.](#), 120 Cal. App. 4th 72, 14 Cal. Rptr. 3d 893 (4th Dist. 2004).
- 4 Cal.—[Long v. State Personnel Bd.](#), 41 Cal. App. 3d 1000, 116 Cal. Rptr. 562 (3d Dist. 1974).
- 5 Cal.—[Long v. State Personnel Bd.](#), 41 Cal. App. 3d 1000, 116 Cal. Rptr. 562 (3d Dist. 1974).  
**Bartenders**  
Women may lawfully work as bartenders.  
Cal.—[Sail'er Inn, Inc. v. Kirby](#), 5 Cal. 3d 1, 95 Cal. Rptr. 329, 485 P.2d 529, 46 A.L.R.3d 351 (1971).  
N.Y.—[Wilson v. Hacker](#), 200 Misc. 124, 101 N.Y.S.2d 461 (Sup 1950).
- 6 **Position at youth authority facility**  
An employment qualification which did not in any way prohibit a female applicant from pursuing an occupation of minister or chaplain but merely prevented her from pursuing such occupation at a particular youth authority facility did not conflict with the constitutional provision.  
Cal.—[Long v. State Personnel Bd.](#), 41 Cal. App. 3d 1000, 116 Cal. Rptr. 562 (3d Dist. 1974).
- 7 Cal.—[Long v. State Personnel Bd.](#), 41 Cal. App. 3d 1000, 116 Cal. Rptr. 562 (3d Dist. 1974).

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### PART III. Overview of Protected Personal Rights and Freedoms; Police Power

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## Research References

### A.L.R. Library

A.L.R. Index, Civil Rights and Discrimination

A.L.R. Index, Constitutional Law

West's A.L.R. Digest, [Constitutional Law](#) 🔑 [1065](#), [1075](#) to [1085](#), [1089](#), [1107](#) to [1112\(1\)](#), [1150](#) to [1158](#), [1170](#), [1490](#), [1491](#), [1493](#) to [1497](#), [1517](#), [1520](#), [1524](#), [1526](#) to [1528](#), [1545](#), [1550](#), [1580](#), [1580](#), [1670](#), [1681](#), [1687](#), [1800](#), [1880](#), [1885](#), [1894](#), [1901](#), [1926](#), [3851](#), [4034](#)

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## 16A C.J.S. Constitutional Law § 839

Corpus Juris Secundum | June 2021 Update

### Constitutional Law

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### PART III. Overview of Protected Personal Rights and Freedoms; Police Power

#### IX. Personal, Civil, and Political Rights and Freedoms

#### D. Other Particular Rights, Freedoms, and Interests

#### 1. Right to Education and Pursuit of Happiness

## § 839. Right to education

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### West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#)  1075 to 1078

**Public education is not a fundamental right under the Federal Constitution, and where a state constitution establishes education as a fundamental right, it is subject to reasonable regulation by the State under the police power.**

Public education is not a fundamental right under the Federal Constitution,<sup>1</sup> and it could even be abolished by the State if done in a nondiscriminatory manner.<sup>2</sup> On the other hand, many state constitutions establish education as a fundamental and basic right,<sup>3</sup> the violation of which obliges the courts to afford an appropriate remedy to redress such wrong.<sup>4</sup> The fundamental right to education does not encompass a fundamental right to college or community college education,<sup>5</sup> and furthermore, participation in nonacademic extracurricular activities, including athletics, is not a constitutionally protected right.<sup>6</sup>

The constitutional right to public education is subject to reasonable regulation by the State under the police power.<sup>7</sup> Under the police power, the State may, in the interest of public health, require that children be vaccinated before they are admitted to the public schools<sup>8</sup> and that students, before registration, have an examination for the detection of a dangerous disease.<sup>9</sup>

The language of the constitutional provisions means that all children are entitled to a free, adequate, and quality public education, i.e., an education that provides them with the opportunity to prepare for their future roles as citizens, participants in the political system, and competitors both economically and intellectually.<sup>10</sup> Some courts have found that an extreme disparity between the amount of money spent on public school students in property-poor districts and property-rich districts does not violate a state constitutional obligation to provide for free common schools.<sup>11</sup> In this regard, the constitution does not require either equal expenditures within school districts or that educational expenditures per pupil in every school district be identical.<sup>12</sup> Under other authority, however, children have a fundamental right to an equal opportunity for a sound basic education,<sup>13</sup> and the constitutional mandate to provide a thorough and efficient education includes the requirement that a state's formula for funding county school systems be applied in an equal or uniform manner.<sup>14</sup> Thus, an allegation that the funding of public primary and secondary education has resulted in inadequate educational opportunity to students in less wealthy school districts states a claim for a violation of the constitution's education clause.<sup>15</sup>

### *Special education.*

The right to a free public education is not measured by the physical or intellectual ability of the child.<sup>16</sup> All children, including those requiring a special education, have a right to be amply provided with an education.<sup>17</sup> However, parents with financial ability to fully support profoundly mentally disabled, school-age children residing in state institutions for the mentally disabled are not constitutionally entitled to require the public to assume a support obligation for such children;<sup>18</sup> furthermore, it is a reasonable exercise of state authority to require that eligibility for special education services be certified by a physician licensed to practice medicine.<sup>19</sup>

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### Footnotes

- 1 U.S.—*Texas v. Certain Named & Unnamed Undocumented Alien Children*, 458 U.S. 1131, 103 S. Ct. 14, 73 L. Ed. 2d 1401 (1982); *Plyler v. Doe*, 457 U.S. 202, 102 S. Ct. 2382, 72 L. Ed. 2d 786, 4 Ed. Law Rep. 953 (1982); *Project Reflect, Inc. v. Metropolitan Nashville Bd. of Public Educ.*, 947 F. Supp. 2d 868, 299 Ed. Law Rep. 530 (M.D. Tenn. 2013).  
Ark.—*James v. Williams*, 372 Ark. 82, 270 S.W.3d 855, 240 Ed. Law Rep. 432 (2008).  
Neb.—*Citizens of Decatur for Equal Educ. v. Lyons-Decatur School Dist.*, 274 Neb. 278, 739 N.W.2d 742, 224 Ed. Law Rep. 938 (2007).  
As to the right to education considered as a federal civil right, see C.J.S., *Civil Rights* § 159.
- 2 U.S.—*Petrey v. Flaughner*, 505 F. Supp. 1087 (E.D. Ky. 1981).
- 3 Ark.—*Walker v. Arkansas State Bd. of Educ.*, 2010 Ark. 277, 365 S.W.3d 899, 280 Ed. Law Rep. 505 (2010).  
N.J.—*Abbott ex rel. Abbott v. Burke*, 206 N.J. 332, 20 A.3d 1018, 268 Ed. Law Rep. 328 (2011).  
N.C.—*Wake Cares, Inc. v. Wake County Bd. of Educ.*, 363 N.C. 165, 675 S.E.2d 345 (2009).  
S.D.—*Davis v. State*, 2011 SD 51, 804 N.W.2d 618, 273 Ed. Law Rep. 411 (S.D. 2011).  
W. Va.—*Kanawha County Public Library Bd. v. Board of Educ. of County of Kanawha*, 231 W. Va. 386, 745 S.E.2d 424, 295 Ed. Law Rep. 340 (2013).  
**Constitutionally adequate education**  
N.H.—*Londonderry School District SAU No. 12 v. State*, 154 N.H. 153, 907 A.2d 988, 213 Ed. Law Rep. 640 (2006).  
**Legislative discretion**  
The education clause of the Constitution leaves to the general assembly's broad discretion all determinations as to what means are necessary and proper to promote the public schools and secure to the people the advantages of education.  
R.I.—*City of Pawtucket v. Sundlun*, 662 A.2d 40, 102 Ed. Law Rep. 235 (R.I. 1995).
- 4 N.J.—*Robinson v. Cahill*, 69 N.J. 133, 351 A.2d 713 (1975).

**Any infringement strictly scrutinized**

Conn.—*State v. Stecher*, 35 Conn. Supp. 501, 390 A.2d 408 (Super. Ct. 1977).

**Compelling state interest must be narrowly tailored**

Any denial or infringement of the fundamental state constitutional right to education undertaken in favor of a compelling state interest must be narrowly tailored.

W. Va.—*Pendleton Citizens for Community Schools v. Marockie*, 203 W. Va. 310, 507 S.E.2d 673, 131 Ed. Law Rep. 296 (1998).

Cal.—*Gurfinkel v. Los Angeles Community College Dist.*, 121 Cal. App. 3d 1, 175 Cal. Rptr. 201 (2d Dist. 1981).

**Higher education not fundamental right**

Higher education is not a right essential to a person's liberty or freedom of movement, or a right to the essentials of life, such as food, clothing, equal employment opportunity, and the like, the denials of which are unconstitutional.

N.Y.—*Friedler v. University of New York*, 70 Misc. 2d 416, 333 N.Y.S.2d 928 (Sup. 1972).

Ark.—*Arkansas Activities Ass'n v. Meyer*, 304 Ark. 718, 805 S.W.2d 58, 66 Ed. Law Rep. 847 (1991).

W. Va.—*Bailey v. Truby*, 174 W. Va. 8, 321 S.E.2d 302, 20 Ed. Law Rep. 980 (1984).

N.Y.—*Viemeister v. White*, 179 N.Y. 235, 72 N.E. 97 (1904).

**Suspension or expulsion**

(1) A 10th grade student, who was given a long term suspension, did not state a claim that the county board of education and superintendent violated the student's constitutional right to a free public education by failing to provide her with an alternative education program; reasonable regulations punishable by suspension did not deny the right to an education, but rather denied the right to engage in the prohibited behavior.

N.C.—*Hardy ex rel. Hardy v. Beaufort County Bd. of Educ.*, 200 N.C. App. 403, 683 S.E.2d 774, 249 Ed. Law Rep. 920 (2009).

(2) The statute providing for expulsion from school for up to 12 months of students who bring weapons to school is facially constitutional under the constitutional guarantee of a "thorough and efficient school system," since the state has a compelling interest in providing a safe and secure environment to school children under that constitutional guarantee, and such expulsion is a reasonably necessary and narrowly tailored method to further that interest.

W. Va.—*Cathe A. v. Doddridge County Bd. of Educ.*, 200 W. Va. 521, 490 S.E.2d 340, 120 Ed. Law Rep. 1212 (1997).

As to the nature of the right to admission to the public schools, see C.J.S., *Schools and School Districts* § 962.

N.J.—*Sadlock v. Board of Ed. of Borough of Carlstadt in Bergen County*, 137 N.J.L. 85, 58 A.2d 218 (N.J. Sup. Ct. 1948).

N.Y.—*In re Whitmore*, 47 N.Y.S.2d 143 (Dom. Rel. Ct. 1944).

Ohio—*State ex rel. Dunham v. Board of Ed. of City School Dist. of Cincinnati*, 154 Ohio St. 469, 43 Ohio Op. 384, 96 N.E.2d 413 (1951).

As to health regulations in public schools, generally, see C.J.S., *Schools and School Districts* § 1004.

Wash.—*State ex rel. Holcomb v. Armstrong*, 39 Wash. 2d 860, 239 P.2d 545 (1952).

S.D.—*Davis v. State*, 2011 SD 51, 804 N.W.2d 618, 273 Ed. Law Rep. 411 (S.D. 2011).

N.Y.—*Reform Educational Financing Inequities Today (R.E.F.I.T.) v. Cuomo*, 86 N.Y.2d 279, 631 N.Y.S.2d 551, 655 N.E.2d 647, 103 Ed. Law Rep. 1144 (1995).

R.I.—*City of Pawtucket v. Sundlun*, 662 A.2d 40, 102 Ed. Law Rep. 235 (R.I. 1995).

Colo.—*Dolores Huerta Preparatory High v. Colorado State Bd. of Educ.*, 215 P.3d 1229, 248 Ed. Law Rep. 882 (Colo. App. 2009).

Conn.—*Connecticut Coalition for Justice in Educ. Funding, Inc. v. Rell*, 295 Conn. 240, 990 A.2d 206, 254 Ed. Law Rep. 874 (2010).

W. Va.—*Board of Educ. of County of Kanawha v. West Virginia Bd. of Educ.*, 219 W. Va. 801, 639 S.E.2d 893, 215 Ed. Law Rep. 1154 (2006).

Mass.—*McDuffy v. Secretary of Executive Office of Educ.*, 415 Mass. 545, 615 N.E.2d 516, 83 Ed. Law Rep. 657 (1993).

S.C.—*Abbeville County School Dist. v. State*, 335 S.C. 58, 515 S.E.2d 535, 135 Ed. Law Rep. 833 (1999).

Conn.—*State v. Stecher*, 35 Conn. Supp. 501, 390 A.2d 408 (Super. Ct. 1977).

- 17 Wash.—*School Districts' Alliance for Adequate Funding of Special Educ. v. State*, 149 Wash. App. 241, 202 P.3d 990, 242 Ed. Law Rep. 383 (Div. 2 2009), *aff'd*, 170 Wash. 2d 599, 244 P.3d 1, 262 Ed. Law Rep. 1004 (2010).
- 18 N.J.—*Levine v. State Dept. of Institutions and Agencies*, 84 N.J. 234, 418 A.2d 229 (1980).
- 19 U.S.—*Flemming v. Adams*, 377 F.2d 975 (10th Cir. 1967).

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## 16A C.J.S. Constitutional Law § 840

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### Constitutional Law

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### PART III. Overview of Protected Personal Rights and Freedoms; Police Power

#### IX. Personal, Civil, and Political Rights and Freedoms

#### D. Other Particular Rights, Freedoms, and Interests

#### 1. Right to Education and Pursuit of Happiness

## § 840. Pursuit of happiness

[Topic Summary](#) | [References](#) | [Correlation Table](#)

### West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#)  1107

**While the right to the pursuit of happiness is not absolute and yields to the regulatory powers of government, it is a natural right protected by the various constitutions.**

The right to the pursuit of happiness is one of the inherent, natural, and inalienable rights<sup>1</sup> applicable to all citizens.<sup>2</sup> As one of the purposes for which government is organized, such right is protected by its incorporation into the various constitutions.<sup>3</sup>

The term "pursuit of happiness" is a comprehensive expression which covers a broad field.<sup>4</sup> This expression is one of a general nature, and the right thus secured is not capable of specific definition or limitation but is really the aggregate of many particular rights, some of which are enumerated in the constitutions and others included in the general guaranty of "liberty."<sup>5</sup>

The happiness of individuals may consist of many things or depend on many circumstances.<sup>6</sup> Insofar as it is likely to be acted on by the operations of government, it is clear that it must comprise personal freedom, exemption from oppression or invidious discrimination, and liberty of conscience.<sup>7</sup> It also includes the right to freely associate for the promotion of political and social

ideas, the right to procreate,<sup>8</sup> and the right to enjoy the domestic relations and the privileges of the family and the home.<sup>9</sup> Furthermore, it includes the right of privacy,<sup>10</sup> the right to marital privacy and choice,<sup>11</sup> and the right to control matters affecting reproduction regardless of marital status.<sup>12</sup>

The pursuit of happiness embraces the idea of the acquisition and use of private property,<sup>13</sup> the right to protect one's health,<sup>14</sup> and the right to pursue any lawful business or occupation in any manner not inconsistent with the equal rights of others.<sup>15</sup> In addition, the constitutional guaranty includes the right to one's reputation.<sup>16</sup>

The right to the pursuit of happiness is not an absolute right, however, but is acquired and enjoyed subject to the exercise of the regulatory powers of government.<sup>17</sup> Nowhere in the constitution does the government guarantee a citizen the right to the citizen's own idiosyncratic vision of happiness.<sup>18</sup> Under the police power, therefore, laws may be enacted limiting and restricting the right to the pursuit of happiness.<sup>19</sup>

Pursuant to the police power, the State may impose reasonable limitations and restrictions on the pursuit of happiness in order to promote the general welfare,<sup>20</sup> public health,<sup>21</sup> public safety and order,<sup>22</sup> public morals,<sup>23</sup> and public comfort,<sup>24</sup> as well as to prevent fraud.<sup>25</sup> The State has a heavy responsibility to justify its interference in a person's right to the pursuit of happiness,<sup>26</sup> and a person may not be deprived of this right under police regulations when such regulations are not reasonably comprehended within the scope of the police power.<sup>27</sup>

In accordance with the foregoing rules, various statutes, ordinances, and regulations have been examined to determine whether they violate the constitutional right to the pursuit of happiness; more particularly, there is not a deprivation of the right to the pursuit of happiness by the prohibition of fortune telling;<sup>28</sup> cockfighting;<sup>29</sup> the sale of intoxicating liquors;<sup>30</sup> the sale of sexual devices;<sup>31</sup> the delivery,<sup>32</sup> possession, and use of marijuana;<sup>33</sup> and the waste of natural gas,<sup>34</sup> or by particular laws regulating labor relations.<sup>35</sup>

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#### Footnotes

- 1 U.S.—*Butchers' Union Slaughter-House & Live-Stock Landing Co. v. Crescent City Live-Stock Landing & Slaughter-House Co.*, 111 U.S. 746, 4 S. Ct. 652, 28 L. Ed. 585 (1884).  
Ohio—*State v. Williams*, 88 Ohio St. 3d 513, 2000-Ohio-428, 728 N.E.2d 342 (2000).  
N.J.—*Right To Choose v. Byrne*, 165 N.J. Super. 443, 398 A.2d 587 (Ch. Div. 1979).  
Tex.—*Hunt v. Hudgins*, 168 S.W.2d 703 (Tex. Civ. App. Waco 1943).  
As to natural rights, generally, see § 721.
  - 2 N.J.—*New Jersey Ass'n for Retarded Citizens, Inc. v. New Jersey Dept. of Human Services*, 89 N.J. 234, 445 A.2d 704 (1982).
  - 3 Cal.—*Brown v. City of Los Angeles*, 183 Cal. 783, 192 P. 716 (1920).  
Ind.—*Kirtley v. State*, 227 Ind. 175, 84 N.E.2d 712 (1949).  
N.J.—*Right To Choose v. Byrne*, 165 N.J. Super. 443, 398 A.2d 587 (Ch. Div. 1979).
  - 4 N.D.—*State v. Cromwell*, 72 N.D. 565, 9 N.W.2d 914 (1943).  
Wis.—*Nunnemacher v. State*, 129 Wis. 190, 108 N.W. 627 (1906).
- Personal adornment**  
The desire and inclination of mankind to adorn and beautify the person is not wicked nor evil of itself but is lawful and within the realm of inalienable rights classically defined as the "pursuit of happiness."  
Cal.—*Whitcomb v. Emerson*, 46 Cal. App. 2d 263, 115 P.2d 892 (4th Dist. 1941).
- 5 N.D.—*State v. Cromwell*, 72 N.D. 565, 9 N.W.2d 914 (1943).

- 6 N.D.—[State v. Cromwell](#), 72 N.D. 565, 9 N.W.2d 914 (1943).
- 7 N.D.—[State v. Cromwell](#), 72 N.D. 565, 9 N.W.2d 914 (1943).
- 8 U.S.—[Acanfora v. Board of Ed. of Montgomery County](#), 359 F. Supp. 843 (D. Md. 1973), judgment aff'd, 491 F.2d 498 (4th Cir. 1974).  
**Choosing whether to join union**  
Every person is guaranteed the right to choose whether to belong to a union, and no legislation is necessary to further such guaranty.  
Wyo.—[Hagen v. Culinary Workers Alliance Local No. 337](#), 70 Wyo. 165, 246 P.2d 778 (1952).  
As to the right of association, generally, see § 1146.
- 9 N.D.—[Hoff v. Berg](#), 1999 ND 115, 595 N.W.2d 285 (N.D. 1999).
- 10 Cal.—[Kerby v. Hal Roach Studios](#), 53 Cal. App. 2d 207, 127 P.2d 577 (2d Dist. 1942).  
Ill.—[Eick v. Perk Dog Food Co.](#), 347 Ill. App. 293, 106 N.E.2d 742 (1st Dist. 1952).  
As to the constitutional right of privacy, generally, see §§ 1164 to 1203.  
As to the nature and purpose of the right of privacy, see C.J.S., [Right of Privacy and Publicity](#) § 3.
- 11 U.S.—[Loving v. Virginia](#), 388 U.S. 1, 87 S. Ct. 1817, 18 L. Ed. 2d 1010 (1967).
- 12 U.S.—[Acanfora v. Board of Ed. of Montgomery County](#), 359 F. Supp. 843 (D. Md. 1973), judgment aff'd, 491 F.2d 498 (4th Cir. 1974).
- 13 Utah—[Golding v. Schubach Optical Co.](#), 93 Utah 32, 70 P.2d 871 (1937).  
Wis.—[Nunnemacher v. State](#), 129 Wis. 190, 108 N.W. 627 (1906).  
As to the right to acquire, hold, and dispose of property, see § 845.
- 14 N.J.—[Right To Choose v. Byrne](#), 165 N.J. Super. 443, 398 A.2d 587 (Ch. Div. 1979).  
**Health and medical care issues**  
The state constitutional guarantee to each person of the inalienable right to seek safety, health, and happiness in all lawful ways includes the right to seek and obtain medical care from a chosen health care provider and to make personal judgments affecting one's own health and bodily integrity without government interference.  
Mont.—[Armstrong v. State](#), 1999 MT 261, 296 Mont. 361, 989 P.2d 364 (1999).
- 15 § 832.
- 16 N.J.—[Neafie v. Hoboken Printing & Publishing Co.](#), 75 N.J.L. 564, 68 A. 146 (N.J. Ct. Err. & App. 1907).  
**Good name and fame**  
The right to one's good name and fame is as absolute and essential to the pursuit of happiness as is the right to life and liberty.  
La.—[Kennedy v. Item Co.](#), 213 La. 347, 34 So. 2d 886 (1948).  
Concerning reputation as an aspect of the right to personal security, generally, see § 852.
- 17 Cal.—[National Organization for Reform of Marijuana Laws v. Gain](#), 100 Cal. App. 3d 586, 161 Cal. Rptr. 181 (1st Dist. 1979).  
Ill.—[People v. Brown](#), 407 Ill. 565, 95 N.E.2d 888 (1950).  
N.Y.—[Conlon v. Marshall](#), 185 Misc. 638, 59 N.Y.S.2d 52 (Sup 1945), order aff'd, 271 A.D. 972, 68 N.Y.S.2d 438 (2d Dep't 1947).  
Ohio—[State v. Williams](#), 88 Ohio St. 3d 513, 2000-Ohio-428, 728 N.E.2d 342 (2000).  
**Harmonizing rights**  
A citizen's property right in fingerprints and a photograph and his or her right to privacy and protection as guaranteed by the constitution must be made to harmonize with the rights of the people collectively and the pursuit of happiness likewise guaranteed by the constitution, each yielding to some extent.  
Ind.—[State ex rel. Mavity v. Tyndall](#), 225 Ind. 360, 74 N.E.2d 914 (1947).  
**Necessary sacrifice**  
An individual must sacrifice part of his or her particular interest if the sacrifice is a necessary one in order that organized society as a whole will be benefited.  
Mo.—[State ex rel. Lipps v. City of Cape Girardeau](#), 507 S.W.2d 376 (Mo. 1974).
- 18 Pa.—[Reed v. Dept. of Transp.](#), 872 A.2d 202 (Pa. Commw. Ct. 2005), decision amended, (May 12, 2005) (having driver's license photo taken with eyes closed).
- 19 Cal.—[Brown v. City of Los Angeles](#), 183 Cal. 783, 192 P. 716 (1920).  
Ill.—[People v. Brown](#), 407 Ill. 565, 95 N.E.2d 888 (1950).  
As to the police power, generally, see §§ 699 to 720.

- 20 Idaho—*State v. Troutman*, 50 Idaho 673, 299 P. 668 (1931).  
 Ill.—*People v. Brown*, 407 Ill. 565, 95 N.E.2d 888 (1950).  
**Ordinance proscribing nudity**  
 Cal.—*Eckl v. Davis*, 51 Cal. App. 3d 831, 124 Cal. Rptr. 685 (2d Dist. 1975).
- 21 Ill.—*People v. Brown*, 407 Ill. 565, 95 N.E.2d 888 (1950).  
**Vaccination of school children**  
 N.H.—*Cram v. School Board of Manchester*, 82 N.H. 495, 136 A. 263 (1927).  
**Milk control board**  
 N.J.—*State ex rel. State Board of Milk Control v. Newark Milk Co.*, 118 N.J. Eq. 504, 179 A. 116 (Ct. Err. & App. 1935).
- 22 Ill.—*People v. Brown*, 407 Ill. 565, 95 N.E.2d 888 (1950).  
 Pa.—*Com. v. Blankenstein*, 81 Pa. Super. 340, 1923 WL 3653 (1923).
- 23 Ill.—*People v. Brown*, 407 Ill. 565, 95 N.E.2d 888 (1950).  
 N.Y.—*People v. Byrne*, 99 Misc. 1, 163 N.Y.S. 682 (Sup 1917).
- 24 Ill.—*People v. Brown*, 407 Ill. 565, 95 N.E.2d 888 (1950).
- 25 Fla.—*L. Maxcy, Inc., v. Mayo*, 103 Fla. 552, 139 So. 121 (1931).  
**Fitness of licensee**  
 A city ordinance, pursuant to which a board denied the renewal of a license to operate an automobile repair business after finding that the licensee was not a fit and proper person to be trusted with an automobile repair permit, represented a legitimate exercise of police power in relation to a business particularly open to fraudulent dealing, reflecting the legitimate concern of the city council that licensees be persons of probity, and neither the ordinance nor its application to the licensee unduly interfered with his pursuit of happiness.  
 Cal.—*Saunders v. City of Los Angeles*, 273 Cal. App. 2d 407, 78 Cal. Rptr. 236 (2d Dist. 1969).
- 26 Ohio—*Jacobs v. Benedict*, 35 Ohio Misc. 92, 64 Ohio Op. 2d 355, 301 N.E.2d 723 (C.P. 1973), judgment aff'd, 39 Ohio App. 2d 141, 68 Ohio Op. 2d 343, 316 N.E.2d 898 (1st Dist. Hamilton County 1973).
- 27 Ill.—*Scully v. Hallihan*, 365 Ill. 185, 6 N.E.2d 176 (1936).  
 As to the scope of police power, see § 702.
- 28 Ohio—*Davis v. State*, 118 Ohio St. 25, 6 Ohio L. Abs. 61, 160 N.E. 473 (1928).
- 29 Okla.—*Edmondson v. Pearce*, 2004 OK 23, 91 P.3d 605 (Okla. 2004), as corrected, (July 28, 2004).
- 30 N.D.—*State v. Ross*, 39 N.D. 630, 170 N.W. 121 (1918).  
**Sale of beer on Sundays**  
 Mo.—*Nickols v. North Kansas City*, 358 Mo. 402, 214 S.W.2d 710 (1948).
- 31 Ala.—*1568 Montgomery Highway, Inc. v. City of Hoover*, 45 So. 3d 319 (Ala. 2010).
- 32 Iowa—*State v. Leins*, 234 N.W.2d 645 (Iowa 1975).
- 33 Cal.—*National Organization for Reform of Marijuana Laws v. Gain*, 100 Cal. App. 3d 586, 161 Cal. Rptr. 181 (1st Dist. 1979).  
 Ga.—*Blincoe v. State*, 231 Ga. 886, 204 S.E.2d 597 (1974).  
 Iowa—*State v. Leins*, 234 N.W.2d 645 (Iowa 1975).
- 34 Ind.—*Townsend v. State*, 147 Ind. 624, 47 N.E. 19 (1897).
- 35 Mass.—*Com. v. Libbey*, 216 Mass. 356, 103 N.E. 923 (1914).  
 Mo.—*King v. Priest*, 357 Mo. 68, 206 S.W.2d 547 (1947).

## 16A C.J.S. Constitutional Law § 841

Corpus Juris Secundum | June 2021 Update

### Constitutional Law

Francis C. Amendola, J.D.; Joseph Bassano, J.D.; John Bourdeau, J.D.; M. Elaine Buccieri, J.D.; James Buchwalter, J.D.; Michael N. Giuliano, J.D.; Lonnie E. Griffith, Jr., J.D.; Eleanor L. Grossman, J.D., of the staff of the National Legal Research Group, Inc.; Jill Gustafson, J.D.; Glenda K. Harnad, J.D.; Alan J. Jacobs, J.D.; John Kimpflen, J.D.; Amy L. Kruse, J.D.; Stephen Lease, J.D.; Sonja Larsen, J.D.; Robert B. McKinney, J.D., of the staff of the National Legal Research Group, Inc.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; Thomas Muskus, J.D.; Sally J.T. Necheles, J.D., LL.M.; Karl Oakes, J.D. and Eric C. Surette, J.D.

### PART III. Overview of Protected Personal Rights and Freedoms; Police Power

#### IX. Personal, Civil, and Political Rights and Freedoms


#### D. Other Particular Rights, Freedoms, and Interests

#### 2. Freedom of Expression

### § 841. Constitutional right to freedom of expression, generally

[Topic Summary](#) | [References](#) | [Correlation Table](#)

#### West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#)  1150 to 1158, 1170, 1490, 1491, 1493 to 1497, 1517, 1520, 1524, 1526 to 1528, 1545, 1850, 1894, 3851, 4034

#### Freedom of expression is protected by the First and Fourteenth Amendments.

The First Amendment to the Federal Constitution protects freedom of expression or the expression of ideas and points of view,<sup>1</sup> even through activity,<sup>2</sup> and the Fourteenth Amendment extends this protection against state action.<sup>3</sup> This is particularly true with regard to those ideas that make a significant contribution to the "marketplace of ideas."<sup>4</sup> The First Amendment rights of expression are fundamental to the preservation of an open, democratic society since a restriction on their exercise inhibits the debate by which society's values are set and its laws reformed to reflect prevailing opinion.<sup>5</sup> As a general matter, the First Amendment means that the government has no power to restrict expression because of its message, its ideas, its subject matter, or its content,<sup>6</sup> however, this principle, like other First Amendment principles, is not absolute.<sup>7</sup> Freedom of expression is a preferred right, however, and close or careful scrutiny is required where the possibility of an infringement of that right exists.<sup>8</sup>

An underlying purpose of the First Amendment is to protect the interchange of ideas,<sup>9</sup> and a paramount public interest protected by the First Amendment is to insure a free exchange of ideas and the discussion of public affairs.<sup>10</sup> In this connection, the government may not set with impunity an agenda for public debate by extending preferential treatment to the dissemination of views on some topics while denying other persons a forum for the expression of less favored or more controversial beliefs.<sup>11</sup>

The right to distribute leaflets in public places is within the right of free expression; hence, a transit authority may not bar the distribution of handbills, leaflets, and other printed matter by individuals, on subway platforms.<sup>12</sup> Likewise, picketing and the expression of ideas attendant thereto is a constitutionally protected form of activity;<sup>13</sup> thus, discrimination among picketers must be tailored to serve a substantial governmental interest.<sup>14</sup>

The First Amendment's freedom of expression applies to artistic expression<sup>15</sup> and music.<sup>16</sup> It also applies to the advocacy of teaching abstract communist theory,<sup>17</sup> and the First and Fourteenth Amendments render invalid statutes regulating advocacy that are not limited to advocacy of action.<sup>18</sup> Furthermore, the Fourteenth Amendment prohibits a state from imposing criminal punishment for public advocacy of peaceful change in our institutions.<sup>19</sup>

Prior restraints are viewed unfavorably under the First Amendment because they forbid certain communications before they occur, usually through the issuance of an administrative or judicial order.<sup>20</sup> Any system of prior restraints of expression comes to the court, bearing a heavy presumption against its constitutional validity,<sup>21</sup> and it may not be sanctioned unless, at least, provision is made for an advance judicial determination as to whether protected expression is involved.<sup>22</sup> Where the inhibition of expression occurs in a preliminary proceeding, with no guaranty of prompt judicial decision on the merits, the procedure is constitutionally defective.<sup>23</sup> Standards of permissible statutory vagueness are strict in the area of free expression, and the government may regulate in that area only with narrow specificity.<sup>24</sup> A regulation prohibiting a broad range of protected expression may be facially challenged as overbroad.<sup>25</sup> Furthermore, the State cannot constitutionally premise legislation on the desirability of controlling a person's private thoughts<sup>26</sup> although regulations targeting thought plus conduct do not implicate the First Amendment's freedom of mind principle.<sup>27</sup>

In the light of the foregoing principles, various particular statutes, ordinances, or governmental actions have been considered to violate the right of freedom of expression, such as the denial of a request by an antiabortion group to march in a parade;<sup>28</sup> the removal of an advertiser's antiwar posters on city transit buses;<sup>29</sup> the denial of the right of students to wear particular artifacts, such as armbands<sup>30</sup> or "freedom buttons";<sup>31</sup> an ordinance limiting the time for door-to-door canvassing by civic organizations;<sup>32</sup> and a statute making it a crime to exhibit nude pictures of people in any public place except art galleries.<sup>33</sup> Other examples of violations of the right of freedom of expression include a statute making it a crime to publicly treat contemptuously the flag of the United States<sup>34</sup> and a statute prohibiting the influencing of the results of the attitude of voters on the day of an election.<sup>35</sup>

On the other hand, various particular statutes, ordinances, or governmental actions have been found not violative of the right of freedom of expression, such as a statute proscribing prostitution,<sup>36</sup> a statute imposing a durational residency requirement for the office of city councilperson,<sup>37</sup> and a statute prohibiting sodomy and lewd and lascivious acts as applied to consenting adults.<sup>38</sup>

### ***Commercial advertising.***

Commercial advertising is not protected by the First and Fourteenth Amendments.<sup>39</sup>

*Soldiers and prisoners.*

Even with respect to soldiers and prisoners, the Federal Constitution requires governmental authorities to permit the maximum degree of unrestrained expression consistent with the maintenance of institutional integrity although such right may be curtailed in a manner that would be intolerable in the outside community.<sup>40</sup>

CUMULATIVE SUPPLEMENT

Cases:

Lodestar for the First Amendment is the preservation of the marketplace of ideas. [U.S. Const. Amend. 1. Washington Post v. McManus, 944 F.3d 506 \(4th Cir. 2019\).](#)

Appropriate standard for analyzing a free speech claim involving expression in a limited public forum is whether restrictions on speech are reasonable and viewpoint-neutral. [U.S.C.A. Const.Amend. 1. Powell v. Noble, 798 F.3d 690 \(8th Cir. 2015\).](#)

[END OF SUPPLEMENT]

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Footnotes

- 1 U.S.—[Stanford v. State of Tex., 379 U.S. 476, 85 S. Ct. 506, 13 L. Ed. 2d 431 \(1965\).](#)  
N.Y.—[Hemingway's Estate v. Random House, Inc., 23 N.Y.2d 341, 296 N.Y.S.2d 771, 244 N.E.2d 250, 32 A.L.R.3d 605 \(1968\).](#)  
**Dissension and criticism included**  
Wash.—[Hughes v. Kramer, 82 Wash. 2d 537, 511 P.2d 1344 \(1973\).](#)  
**Statute unconstitutional on its face**  
A statute is unconstitutional on its face if it prohibits a substantial amount of protected expression.  
U.S.—[Ashcroft v. Free Speech Coalition, 535 U.S. 234, 122 S. Ct. 1389, 152 L. Ed. 2d 403 \(2002\).](#)
- 2 U.S.—[Waugh v. Nevada State Bd. of Cosmetology, 36 F. Supp. 3d 991 \(D. Nev. 2014\).](#)
- 3 U.S.—[Mocek v. City of Albuquerque, 3 F. Supp. 3d 1002 \(D.N.M. 2014\).](#)  
Idaho—[State v. Manzanares, 152 Idaho 410, 272 P.3d 382 \(2012\).](#)
- 4 U.S.—[Brick v. Board of Ed., School Dist. No. 1, Denver, Colo., 305 F. Supp. 1316 \(D. Colo. 1969\).](#)
- 5 U.S.—[Hanover v. Northrup, 325 F. Supp. 170 \(D. Conn. 1970\).](#)
- 6 Idaho—[State v. Ruggiero, 156 Idaho 662, 330 P.3d 408 \(Ct. App. 2014\), review denied, \(Aug. 15, 2014\).](#)  
Minn.—[State v. Melchert-Dinkel, 844 N.W.2d 13, 96 A.L.R.6th 755 \(Minn. 2014\).](#)
- 7 U.S.—[Ashcroft v. American Civil Liberties Union, 535 U.S. 564, 122 S. Ct. 1700, 152 L. Ed. 2d 771 \(2002\).](#)
- 8 N.J.—[New Chancellor Cinema, Inc. v. Town of Irvington, 169 N.J. Super. 564, 405 A.2d 438 \(Law Div. 1979\).](#)
- 9 U.S.—[U.S. v. Criden, 675 F.2d 550 \(3d Cir. 1982\).](#)
- 10 Cal.—[Eberle v. Municipal Court, 55 Cal. App. 3d 423, 127 Cal. Rptr. 594 \(2d Dist. 1976\).](#)
- 11 Colo.—[City of Lakewood v. Colfax Unlimited Ass'n, Inc., 634 P.2d 52 \(Colo. 1981\).](#)
- 12 N.Y.—[People v. St. Clair, 56 Misc. 2d 326, 288 N.Y.S.2d 388 \(N.Y. City Crim. Ct. 1968\).](#)  
As to the distribution of leaflets and printed matter in connection with the freedom of speech and press, see § 994.
- 13 U.S.—[Rasche v. Board of Trustees of University of Illinois, 353 F. Supp. 973 \(N.D. Ill. 1972\).](#)  
Ala.—[Handley v. City of Montgomery, 401 So. 2d 171 \(Ala. Crim. App. 1981\), writ denied, 401 So. 2d 185 \(Ala. 1981\).](#)  
N.J.—[Pebble Brook, Inc. v. Smith, 140 N.J. Super. 273, 356 A.2d 48 \(Ch. Div. 1976\).](#)

### Improper business activities

Absent a showing that a message is being presented in a nonpeaceful manner or is false and is being distributed with knowledge of the falsity or reckless disregard for the truth, the State may not interfere with leafleting and picketing designed to educate the public about the allegedly improper business activities of a particular establishment.

U.S.—*Concerned Consumers League v. O'Neill*, 371 F. Supp. 644 (E.D. Wis. 1974).

As to picketing in connection with the freedom of speech, generally, see § 992.

As to picketing in connection with regard to labor matters, see § 1058.

U.S.—*Police Dept. of City of Chicago v. Mosley*, 408 U.S. 92, 92 S. Ct. 2286, 33 L. Ed. 2d 212 (1972).

N.M.—*Elane Photography, LLC v. Willock*, 2012-NMCA-086, 284 P.3d 428 (N.M. Ct. App. 2012), judgment aff'd, 2013-NMSC-040, 309 P.3d 53 (N.M. 2013), cert. denied, 134S. Ct. 1787, 188 L. Ed. 2d 757 (2014).

### Expressive uses of celebrity image given broad scope

A celebrity's right of publicity cannot, consistent with the First Amendment, be a right to control the celebrity's image by censoring disagreeable portrayals; once the celebrity thrusts him- or herself forward into the limelight, the First Amendment dictates that the right to comment on, parody, lampoon, and make other expressive uses of the celebrity image must be given broad scope.

Cal.—*Winter v. DC Comics*, 30 Cal. 4th 881, 134 Cal. Rptr. 2d 634, 69 P.3d 473, 118 A.L.R.5th 727 (2003).

U.S.—*Hassay v. Mayor*, 955 F. Supp. 2d 505 (D. Md. 2013).

Minn.—*State v. McElroy*, 828 N.W.2d 741 (Minn. Ct. App. 2013).

U.S.—*Ware v. Nichols*, 266 F. Supp. 564 (N.D. Miss. 1967).

U.S.—*Communist Party of Indiana v. Whitcomb*, 414 U.S. 441, 94 S. Ct. 656, 38 L. Ed. 2d 635 (1974).

U.S.—*Street v. New York*, 394 U.S. 576, 89 S. Ct. 1354, 22 L. Ed. 2d 572 (1969).

Minn.—*Rew v. Bergstrom*, 845 N.W.2d 764 (Minn. 2014).

U.S.—*Bantam Books, Inc. v. Sullivan*, 372 U.S. 58, 83 S. Ct. 631, 9 L. Ed. 2d 584 (1963).

N.Y.—*Porco v. Lifetime Entertainment Services, LLC*, 116 A.D.3d 1264, 984 N.Y.S.2d 457 (3d Dep't 2014).

N.Y.—*Firestone v. First Dist. Dental Soc.*, 59 Misc. 2d 362, 299 N.Y.S.2d 551 (Sup 1969).

U.S.—*Grove Press Inc. v. City of Philadelphia*, 418 F.2d 82 (3d Cir. 1969).

U.S.—*Keyishian v. Board of Regents of University of State of N. Y.*, 385 U.S. 589, 87 S. Ct. 675, 17 L. Ed. 2d 629 (1967); *Backpage.com, LLC v. McKenna*, 881 F. Supp. 2d 1262 (W.D. Wash. 2012).

U.S.—*Doe v. Nebraska*, 898 F. Supp. 2d 1086 (D. Neb. 2012).

U.S.—*Stanley v. Georgia*, 394 U.S. 557, 89 S. Ct. 1243, 22 L. Ed. 2d 542 (1969).

Ill.—*People v. Woodrum*, 223 Ill. 2d 286, 307 Ill. Dec. 605, 860 N.E.2d 259 (2006).

U.S.—*North Shore Right to Life Committee v. Manhasset Am. Legion Post No. 304, Town of North Hempstead*, 452 F. Supp. 834 (E.D. N.Y. 1978).

Wash.—*Hillside Community Church, Inc. v. City of Tacoma*, 76 Wash. 2d 63, 455 P.2d 350 (1969).

U.S.—*Tinker v. Des Moines Independent Community School Dist.*, 393 U.S. 503, 89 S. Ct. 733, 21 L. Ed. 2d 731 (1969).

U.S.—*Burnside v. Byars*, 363 F.2d 744 (5th Cir. 1966).

U.S.—*Connecticut Citizens Action Group (CCAG) v. Town of Southington*, 508 F. Supp. 43 (D. Conn. 1980).

U.S.—*Entertainment Ventures, Inc. v. Brewer*, 306 F. Supp. 802 (M.D. Ala. 1969).

U.S.—*Goguen v. Smith*, 471 F.2d 88 (1st Cir. 1972), judgment aff'd, 415 U.S. 566, 94 S. Ct. 1242, 39 L. Ed. 2d 605 (1974).

Or.—*KPOJ, Inc. v. Thornton*, 253 Or. 512, 456 P.2d 76 (1969).

Ind.—*Owens v. State*, 424 N.E.2d 169 (Ind. Ct. App. 1981).

Wash.—*Lawrence v. City of Issaquah*, 84 Wash. 2d 146, 524 P.2d 1347 (1974).

Ariz.—*State v. Bateman*, 113 Ariz. 107, 547 P.2d 6 (1976).

Cal.—*People v. Singer*, 50 Cal. App. 3d Supp. 9, 123 Cal. Rptr. 460 (App. Dep't Super. Ct. 1975).

N.Y.—*New York Times Co. v. City of New York, Commission on Human Rights*, 79 Misc. 2d 1046, 362 N.Y.S.2d 321 (Sup 1974), judgment aff'd, 49 A.D.2d 851, 374 N.Y.S.2d 9 (1st Dep't 1975), order aff'd, 41 N.Y.2d 345, 393 N.Y.S.2d 312, 361 N.E.2d 963 (1977).

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U.S.—[Thomas v. Board of Ed., Granville Central School Dist.](#), 607 F.2d 1043 (2d Cir. 1979).

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## 16A C.J.S. Constitutional Law § 842

Corpus Juris Secundum | June 2021 Update

### Constitutional Law

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### PART III. Overview of Protected Personal Rights and Freedoms; Police Power

#### IX. Personal, Civil, and Political Rights and Freedoms

#### D. Other Particular Rights, Freedoms, and Interests

#### 2. Freedom of Expression

## § 842. Political expression

[Topic Summary](#) | [References](#) | [Correlation Table](#)

### West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#)  1170, 1490, 1550, 1681, 1687, 1926

### The First Amendment affords the broadest protection in the area of political expression.

The First Amendment of the United States Constitution safeguards an individual's right to participate in the public debate through political expression.<sup>1</sup> The First Amendment affords the broadest protection in this area,<sup>2</sup> such as the discussion of public issues and debate on the qualifications of candidates.<sup>3</sup> Political expression includes any fair comment on any matter of public interest.<sup>4</sup> It is the very expression of views with respect to controversial political issues that most requires the protection of the First and Fourteenth Amendments.<sup>5</sup>

A major purpose of the First Amendment is to protect the free discussion of governmental affairs and to ensure that the individual citizen can effectively participate in and contribute to the republican system of self-government.<sup>6</sup> The First Amendment creates an open marketplace in which differing ideas about political issues can compete freely for public acceptance without improper governmental interference.<sup>7</sup> A candidate for federal office has a First Amendment right to engage in a discussion of public issues and vigorously and tirelessly to advocate his or her own election and the election of other candidates.<sup>8</sup> Advocacy of the

election or defeat of candidates for federal office is no less entitled to protection under the First Amendment than the discussion of political policy generally or the advocacy of the passage or defeat of legislation.<sup>9</sup> The role that elected officials play in society makes it all the more imperative that they be allowed freely to express themselves on matters of current public importance.<sup>10</sup>

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Footnotes

- 1 U.S.—*McCutcheon v. Federal Election Com'n*, 134 S. Ct. 1434, 188 L. Ed. 2d 468 (2014).
- 2 U.S.—*Gewertz v. Jackman*, 467 F. Supp. 1047, 4 Fed. R. Evid. Serv. 816 (D.N.J. 1979).  
Md.—*State v. Brookins*, 380 Md. 345, 844 A.2d 1162 (2004).
- 3 U.S.—*Buckley v. Valeo*, 424 U.S. 1, 96 S. Ct. 612, 46 L. Ed. 2d 659 (1976).
- 4 N.J.—*State v. Miller*, 162 N.J. Super. 333, 392 A.2d 1222 (App. Div. 1978), judgment aff'd, 83 N.J. 402, 416 A.2d 821 (1980).
- 5 U.S.—*Wolin v. Port of New York Authority*, 268 F. Supp. 855 (S.D. N.Y. 1967), judgment aff'd, 392 F.2d 83 (2d Cir. 1968).
- 6 U.S.—*Arizona Free Enterprise Club's Freedom Club PAC v. Bennett*, 131 S. Ct. 2806, 180 L. Ed. 2d 664 (2011); *Asgeirsson v. Abbott*, 696 F.3d 454 (5th Cir. 2012), cert. denied, 133 S. Ct. 1634, 185 L. Ed. 2d 616 (2013).  
N.J.—*Mazdabrook Commons Homeowners' Ass'n v. Khan*, 210 N.J. 482, 46 A.3d 507 (2012).
- 7 U.S.—*Knox v. Service Employees Intern. Union, Local 1000*, 132 S. Ct. 2277, 183 L. Ed. 2d 281 (2012).
- 8 U.S.—*Buckley v. Valeo*, 424 U.S. 1, 96 S. Ct. 612, 46 L. Ed. 2d 659 (1976).
- 9 U.S.—*Buckley v. Valeo*, 424 U.S. 1, 96 S. Ct. 612, 46 L. Ed. 2d 659 (1976).
- 10 U.S.—*Republican Party of Minnesota v. White*, 536 U.S. 765, 122 S. Ct. 2528, 153 L. Ed. 2d 694 (2002).

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## 16A C.J.S. Constitutional Law § 843

Corpus Juris Secundum | June 2021 Update

### Constitutional Law

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### PART III. Overview of Protected Personal Rights and Freedoms; Police Power

#### IX. Personal, Civil, and Political Rights and Freedoms

#### D. Other Particular Rights, Freedoms, and Interests

#### 2. Freedom of Expression

## § 843. Symbolic speech or conduct communicative in character

[Topic Summary](#) | [References](#) | [Correlation Table](#)

### West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#)  1150 to 1158, 1170, 1490, 1497, 1580, 1670, 1885, 1901

**Freedom of expression protected by the First Amendment is not limited to spoken and written words but also extends to symbolic speech or conduct communicative in character.**

Freedom of expression protected by the First Amendment of the United States Constitution is not limited to spoken and written words<sup>1</sup> but also extends to expressive conduct,<sup>2</sup> i.e., symbolic speech or conduct communicative in character.<sup>3</sup> The protected expression may encompass certain forms of conduct illustrative of ideas for bringing about political and social changes.<sup>4</sup> Individual or group conduct for the dominant and virtually sole purpose of expressing views on public questions is well within the concept of "speech" protected by the First Amendment,<sup>5</sup> and the fact that conduct which is communicative in character is undertaken for profit is not itself an impediment to First Amendment protection.<sup>6</sup> It is only where expressive behavior involves substantial disorder or an invasion of the rights of others that it may be regulated by the State.<sup>7</sup>

Expressive conduct enjoys less protection under the First Amendment than does pure speech, and restrictions on its exercise are more likely to be constitutionally permissible.<sup>8</sup> Freedom of expression does not include all modes of communication of ideas

by conduct,<sup>9</sup> and the court must decide for itself whether a given course of conduct falls on the near or the far side of the line of constitutional protection.<sup>10</sup> A person engaging in conduct claimed to be symbolic speech must limit him or herself to lawful conduct and is not entitled to commit criminal acts with impunity even in order to communicate ideas.<sup>11</sup> In the case of symbolic speech, it is proper to consider the existence of many means of communication in order to determine whether a ban on any one of them is justified.<sup>12</sup> A sincere motivation, or labeling of even nonviolent conduct as symbolic, does not necessarily transform that conduct into speech protected by the First Amendment.<sup>13</sup>

Conduct not intended to express an idea cannot be afforded First Amendment protection,<sup>14</sup> and the essential inquiry in a First Amendment case is whether the conduct in issue is sufficiently communicative to fall within the scope of its protection.<sup>15</sup> To determine whether conduct is protected by the First Amendment, the courts ask whether someone intended to convey a particular message through that conduct and also whether there is a great likelihood that the message would be understood by those who viewed it.<sup>16</sup> Some conduct is inherently expressive, and when that is the case, the particularized-message test does not apply.<sup>17</sup> The context in which a symbol is used for purposes of expression may give meaning to the symbol and is thus important in determining whether the activity is sufficiently imbued with the elements of communication to fall within the scope of the First Amendment.<sup>18</sup>

Incidental restriction on symbolic expression will not invalidate an otherwise valid statute.<sup>19</sup> The regulation of symbolic speech, however, must be justified by a state interest other than the suppression of free speech, and any restrictions must be directed to the nonspeech elements of the activity.<sup>20</sup> Violence is not constitutionally protected conduct,<sup>21</sup> and the interest in preventing a threatened breach of the peace, if it actually exists, is sufficient to uphold a statute curtailing the freedom of symbolic speech.<sup>22</sup> The legitimate interests of prison security and administration, therefore, which may justify the curtailment of the right of expression of a prisoner in the form of symbolic speech, include the need to prevent a prisoner's suicide.<sup>23</sup>

In light of the foregoing principles, various particular kinds of conduct have been considered to constitute "symbolic speech" within the protection of the First Amendment, such as the use of a swastika,<sup>24</sup> the wearing of an armband for the purpose of expressing certain views,<sup>25</sup> the display of a flag on clothing,<sup>26</sup> and a boycott of business establishments for the purpose of advancing a cause.<sup>27</sup> On the other hand, various other particular kinds of conduct are not protected as "symbolic speech," such as disrobing.<sup>28</sup>

### ***Nudity.***

Although nudity is not an inherently expressive condition,<sup>29</sup> nudity is protected as speech when combined with some mode of expression that itself is entitled to First Amendment protection.<sup>30</sup> While nude sunbathing or swimming is not itself a First Amendment expression,<sup>31</sup> certain types of nude dancing are expressive conduct that fall within the outer ambit of the First Amendment's protection.<sup>32</sup>

### ***Personal appearance generally.***

Conduct protected by the First and Fourteenth Amendments includes one's manner of dress or personal grooming if truly representative of a philosophy, an idealism, or a point of law.<sup>33</sup> The right to wear one's hair at any desired length or manner is protected by the First Amendment.<sup>34</sup> The wearing of a beard has been deemed to be symbolic conduct entitled to constitutional

protection.<sup>35</sup> However, the growing of hair for purely commercial purposes is not protected by the First Amendment guaranty of freedom of speech.<sup>36</sup>

### ***Tattooing.***

Some courts have held that tattooing is purely expressive activity fully protected by the First Amendment.<sup>37</sup> However, other courts have concluded that tattooing is not protected by the First Amendment because it is not itself expressive conduct.<sup>38</sup> A third approach, refusing to treat tattooing as either protected or unprotected expression, has been suggested in scholarly commentary; this approach would extend First Amendment protections to a particular tattoo artist's work if it has a predominantly expressive purpose, and courts would therefore make a case-by-case inquiry to determine if tattooing is protected by the First Amendment.<sup>39</sup>

## **CUMULATIVE SUPPLEMENT**

### **Cases:**

The wearing of an armband for the purpose of expressing certain views is the type of symbolic act that is within the free speech clause of the First Amendment and is closely akin to pure speech. [U.S.C.A. Const.Amend. 1. U.S. v. Swisher, 811 F.3d 299 \(9th Cir. 2016\).](#)

### **[END OF SUPPLEMENT]**

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### **Footnotes**

- 1 U.S.—[Pollack v. Regional School Unit 75](#), 12 F. Supp. 3d 173, 309 Ed. Law Rep. 921 (D. Me. 2014).
- 2 U.S.—[Heffernan v. City of Paterson](#), 777 F.3d 147 (3d Cir. 2015).
- 3 U.S.—[Virginia v. Black](#), 538 U.S. 343, 123 S. Ct. 1536, 155 L. Ed. 2d 535 (2003); [Turner v. United States Capitol Police](#), 34 F. Supp. 3d 124 (D.D.C. 2014).  
 Conn.—[State v. Moulton](#), 310 Conn. 337, 78 A.3d 55 (2013).  
 Kan.—[In re Hawver](#), 300 Kan. 1023, 339 P.3d 573 (2014).  
**"Symbol" defined**  
 A "symbol" is merely a vehicle by which a concept is transmitted from one person to another, and to be entitled to First Amendment protection, a symbol must represent a specific idea or viewpoint.  
 U.S.—[Davis v. Firmont](#), 269 F. Supp. 524 (E.D. La. 1967), judgment aff'd, 408 F.2d 1085 (5th Cir. 1969).  
**Use of objects**  
 The use of objects such as candles or effigies as communicative instrumentalities involves aspects of speech other than conventional verbal or written expression; such activity, often referred to as symbolic speech, enjoys constitutional guaranties though not coextensive with those afforded pure speech.  
 N.Y.—[Waldbaum, Inc. v. United Farm Workers, AFL-CIO](#), 87 Misc. 2d 267, 383 N.Y.S.2d 957 (Sup 1976).  
 Ohio—[City of Cincinnati v. Adams](#), 42 Ohio Misc. 48, 71 Ohio Op. 2d 455, 330 N.E.2d 463 (Mun. Ct. 1974).  
 4 U.S.—[U.S. v. Dellinger](#), 472 F.2d 340, 22 A.L.R. Fed. 159 (7th Cir. 1972).  
 5 U.S.—[Purple Onion, Inc. v. Jackson](#), 511 F. Supp. 1207 (N.D. Ga. 1981).  
 6 U.S.—[Adamian v. Jacobsen](#), 523 F.2d 929 (9th Cir. 1975).  
 7 U.S.—[Anderson v. City of Hermosa Beach](#), 621 F.3d 1051, 67 A.L.R.6th 681 (9th Cir. 2010); [Maages Auditorium v. Prince George's County, Md.](#), 4 F. Supp. 3d 752 (D. Md. 2014).  
 8 U.S.—[U. S. v. O'Brien](#), 391 U.S. 367, 88 S. Ct. 1673, 20 L. Ed. 2d 672 (1968).  
 9

- 10 U.S.—*American Civil Liberties Union of Florida, Inc. v. Miami-Dade County School Bd.*, 557 F.3d 1177, 242 Ed. Law Rep. 519 (11th Cir. 2009).
- 11 U.S.—*U.S. v. Eberhardt*, 417 F.2d 1009 (4th Cir. 1969).
- 12 U.S.—*U.S. v. Miller*, 367 F.2d 72 (2d Cir. 1966).
- 13 U.S.—*U.S. v. Miller*, 367 F.2d 72 (2d Cir. 1966).
- 14 U.S.—*Bishop v. Colaw*, 450 F.2d 1069 (8th Cir. 1971).
- 15 Kan.—*In re Hawver*, 300 Kan. 1023, 339 P.3d 573 (2014).
- Property owner's decision to refrain from mowing yard as not constituting expression protected by First Amendment**
- Ind.—*Gul v. City of Bloomington*, 22 N.E.3d 853 (Ind. Ct. App. 2014).
- 16 U.S.—*Vivid Entertainment, LLC v. Fielding*, 774 F.3d 566 (9th Cir. 2014).
- Tex.—*Ex parte Thompson*, 442 S.W.3d 325 (Tex. Crim. App. 2014).
- Wedding ceremony**
- U.S.—*Kaahumanu v. Hawaii*, 682 F.3d 789 (9th Cir. 2012).
- Professional mixed martial arts**
- Live-performance, professional mixed martial arts were not expressive conduct protected under the First Amendment such that a statewide combative sport ban did not violate the right of mixed martial arts athletes to engage in expressive conduct, even though the sport communicated a particular message including the fighters' thoughts and feelings as to beauty, creativity, courage, skill and excellence in relation to the sport, as well as the fighters' personal stories, where the particularized message was not likely to be understood by its viewers since it was typically viewed as a competitive sport rather than a public performance, and it was not an inherently expressive activity.
- U.S.—*Jones v. Schneiderman*, 974 F. Supp. 2d 322 (S.D. N.Y. 2013).
- 17 Tex.—*Ex parte Thompson*, 442 S.W.3d 325 (Tex. Crim. App. 2014).
- 18 U.S.—*Spence v. State of Wash.*, 418 U.S. 405, 94 S. Ct. 2727, 41 L. Ed. 2d 842 (1974).
- 19 Vt.—*State v. Arbeitman*, 131 Vt. 596, 313 A.2d 17 (1973).
- 20 U.S.—*Cline v. Rockingham County Superior Court, Exeter, N. H.*, 367 F. Supp. 1146 (D.N.H. 1973), judgment aff'd, 502 F.2d 789 (1st Cir. 1974).
- 21 U.S.—*U.S. v. Jenkins*, 909 F. Supp. 2d 758 (E.D. Ky. 2012).
- 22 Iowa—*State v. Kool*, 212 N.W.2d 518 (Iowa 1973).
- 23 N.Y.—*Von Holden v. Chapman*, 87 A.D.2d 66, 450 N.Y.S.2d 623 (4th Dep't 1982).
- 24 Ill.—*Village of Skokie v. National Socialist Party of America*, 69 Ill. 2d 605, 14 Ill. Dec. 890, 373 N.E.2d 21 (1978).
- 25 U.S.—*Tinker v. Des Moines Independent Community School Dist.*, 393 U.S. 503, 89 S. Ct. 733, 21 L. Ed. 2d 731 (1969).
- 26 Colo.—*People v. Vaughan*, 183 Colo. 40, 514 P.2d 1318 (1973).
- Confederate flag**
- U.S.—*B.W.A. v. Farmington R-7 School Dist.*, 508 F. Supp. 2d 740, 225 Ed. Law Rep. 405 (E.D. Mo. 2007), aff'd, 554 F.3d 734, 241 Ed. Law Rep. 41 (8th Cir. 2009).
- A.L.R. Library**
- Propriety of Prohibition of Display or Wearing of Confederate Flag**, 66 A.L.R.6th 493.
- 27 U.S.—*N. A. A. C. P. v. Claiborne Hardware Co.*, 458 U.S. 886, 102 S. Ct. 3409, 73 L. Ed. 2d 1215 (1982).
- 28 Iowa—*State v. Nelson*, 178 N.W.2d 434 (Iowa 1970).
- Wis.—*City of Madison v. Schultz*, 98 Wis. 2d 188, 295 N.W.2d 798 (Ct. App. 1980).
- 29 U.S.—*White River Amusement Pub, Inc. v. Town of Hartford*, 481 F.3d 163 (2d Cir. 2007).
- 30 U.S.—*Chapin v. Town of Southampton*, 457 F. Supp. 1170 (E.D. N.Y. 1978).
- 31 U.S.—*Chapin v. Town of Southampton*, 457 F. Supp. 1170 (E.D. N.Y. 1978).
- 32 U.S.—*White River Amusement Pub, Inc. v. Town of Hartford*, 481 F.3d 163 (2d Cir. 2007); *MJJG Restaurant, LLC v. Horry County, S.C.*, 11 F. Supp. 3d 541 (D.S.C. 2014).
- 33 Ohio—*City of Cincinnati v. Adams*, 42 Ohio Misc. 48, 71 Ohio Op. 2d 455, 330 N.E.2d 463 (Mun. Ct. 1974).
- 34 U.S.—*Dawson v. Hillsborough County, Fla. School Bd.*, 322 F. Supp. 286 (M.D. Fla. 1971), judgment aff'd, 445 F.2d 308 (5th Cir. 1971).

- 35 Cal.—[King v. California Unemployment Ins. Appeals Bd.](#), 25 Cal. App. 3d 199, 101 Cal. Rptr. 660 (1st Dist. 1972).
- 36 U.S.—[Jackson v. Dorrier](#), 424 F.2d 213 (6th Cir. 1970).
- 37 U.S.—[Anderson v. City of Hermosa Beach](#), 621 F.3d 1051, 67 A.L.R.6th 681 (9th Cir. 2010).  
Ariz.—[Coleman v. City of Mesa](#), 230 Ariz. 352, 284 P.3d 863 (2012).  
**A.L.R. Library**  
[Regulation of Business of Tattooing](#), 67 A.L.R.6th 395 §§ 13 to 19 (First Amendment Analysis).
- 38 Ariz.—[Coleman v. City of Mesa](#), 230 Ariz. 352, 284 P.3d 863 (2012).
- 39 Ariz.—[Coleman v. City of Mesa](#), 230 Ariz. 352, 284 P.3d 863 (2012).

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## 16A C.J.S. Constitutional Law § 844

Corpus Juris Secundum | June 2021 Update

### Constitutional Law

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### PART III. Overview of Protected Personal Rights and Freedoms; Police Power

#### IX. Personal, Civil, and Political Rights and Freedoms

#### D. Other Particular Rights, Freedoms, and Interests

#### 2. Freedom of Expression

## § 844. Limitations and restrictions on freedom of expression

[Topic Summary](#) | [References](#) | [Correlation Table](#)

### West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#)  1150 to 1158, 1170, 1490, 1800, 4034

### Reasonable regulation of the time, place, and manner of expression may be imposed under the First and Fourteenth Amendments.

Generally, reasonable regulation of the time, place, and manner of expression may be imposed under the First and Fourteenth Amendments of the United States Constitution<sup>1</sup> although such regulation may not discriminate on the basis of the content of that expression.<sup>2</sup> For instance, a transit authority may make reasonable regulations to forbid the distribution of purely commercial material on its property and may enact reasonable rules governing the method of circulating leaflets.<sup>3</sup>

While the Federal Constitution, by reason of the Twenty-First Amendment, does not prohibit restrictions in places where liquor is sold, of forms of expression which would otherwise be protected under the First Amendment,<sup>4</sup> a state constitution has been construed to prohibit such a restriction.<sup>5</sup>

Statutes that regulate expression must be carefully scrutinized,<sup>6</sup> and those that prohibit free expression based on the content of the expression are sustainable only for the most compelling of reasons.<sup>7</sup> The test for determining the constitutionality of a government rule or regulation proscribing expressive conduct is whether: (1) the regulation is within the constitutional power of the government; (2) the regulation furthers an important or substantial governmental interest; (3) the governmental interest is unrelated to the suppression of free expression; and (4) the incidental restriction on alleged First Amendment freedoms is no greater than is essential to the furtherance of that interest.<sup>8</sup> Accordingly, an ordinance which makes it disorderly conduct for a person to place on public or private property a symbol, object, appellation, characterization, or graffiti, which one knows or has reasonable grounds to know arouses anger, alarm, or resentment in others on the basis of race, color, creed, religion, or gender has been found facially unconstitutional under the First Amendment.<sup>9</sup>

The government may punish bias-inspired conduct without offending the First Amendment because bigoted conduct inflicts greater individual and societal harm.<sup>10</sup> A provision of a hate crime statute which is directed at criminal conduct and only incidentally affects speech withstands constitutional scrutiny;<sup>11</sup> however, a provision that inhibits free speech on the basis of content is overbroad and unconstitutional.<sup>12</sup> Nevertheless, it has also been found that even where a hate crime statute regulates the content of speech, it is not unconstitutional where it is narrowly tailored to serve a compelling state interest.<sup>13</sup> Statutes which do not make certain acts punishable because of the motive of the defendant but rather enhance the punishment for those acts because of the motive do not violate the First Amendment;<sup>14</sup> however, hate crime statutes that do not increase the penalty for an underlying offense because of a motive grounded in bias but, rather, make criminal the expressions of hate themselves, violate the First Amendment.<sup>15</sup>

A civil rights statute prohibiting discriminatory conduct does not violate the First Amendment where a violation of the statute is determined not by the content of a person's speech but by the person's conduct towards another.<sup>16</sup> Statutes prohibiting all threats of violence and intimidation made in connection with the exercise of federally guaranteed civil rights or privileges do not violate the First Amendment where the statutes prohibit only a mode of expression and pose no significant danger of idea or viewpoint discrimination.<sup>17</sup> Similarly, a statute prohibiting force, the threat of force, and the physical obstruction of reproductive health facilities does not violate the right to freedom of expression where the statute proscribes viewpoint neutral conduct.<sup>18</sup>

## CUMULATIVE SUPPLEMENT

### Cases:

City's actions of declaring that sex-themed adult entertainment convention was unfit and inappropriate for expression and viewing in a public facility, calling for convention's prohibition and suppression, and adopting content-based and viewpoint-based resolution prohibiting city from contracting with producer to use city convention center as venue, would have caused producer future reputational injury likely redressable by injunctive or declaratory relief, as would support finding that producer had standing to bring First Amendment claim against city. [U.S. Const. Amend. 1. Three Expo Events, L.L.C. v. City of Dallas, Texas, 907 F.3d 333 \(5th Cir. 2018\).](#)

## [END OF SUPPLEMENT]

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### Footnotes

- 1 U.S.—*Morgan v. Swanson*, 659 F.3d 359, 273 Ed. Law Rep. 524 (5th Cir. 2011); *Thayer v. City of Worcester*,  
979 F. Supp. 2d 143 (D. Mass. 2013), *aff'd in part and remanded*, 755 F.3d 60 (1st Cir. 2014).
  - 2 U.S.—*Hudgens v. N. L. R. B.*, 424 U.S. 507, 96 S. Ct. 1029, 47 L. Ed. 2d 196 (1976); *Snider v. City of*  
*Cape Girardeau*, 752 F.3d 1149 (8th Cir. 2014).
  - 3 N.Y.—*People v. St. Clair*, 56 Misc. 2d 326, 288 N.Y.S.2d 388 (N.Y. City Crim. Ct. 1968).
  - 4 U.S.—*Showtime Entertainment, LLC v. Town of Mendon*, 769 F.3d 61 (1st Cir. 2014).
  - 5 Alaska—*Mickens v. City of Kodiak*, 640 P.2d 818 (Alaska 1982).
  - 6 U.S.—*United Steelworkers of America, AFL-CIO-CLC v. Dalton*, 544 F. Supp. 282 (E.D. Va. 1982).
  - 7 U.S.—*U. S. v. O'Brien*, 391 U.S. 367, 88 S. Ct. 1673, 20 L. Ed. 2d 672 (1968).
  - 8 Alaska—*Mickens v. City of Kodiak*, 640 P.2d 818 (Alaska 1982).
  - Ariz.—*Coleman v. City of Mesa*, 230 Ariz. 352, 284 P.3d 863 (2012).
  - Ohio—*34 N. Jefferson, L.L.C. v. Liquor Control Comm.*, 2012-Ohio-3231, 974 N.E.2d 774 (Ohio Ct. App.  
10th Dist. Franklin County 2012).
  - 9 U.S.—*R.A.V. v. City of St. Paul, Minn.*, 505 U.S. 377, 112 S. Ct. 2538, 120 L. Ed. 2d 305 (1992).
  - 10 U.S.—*U.S. v. Miller*, 767 F.3d 585 (6th Cir. 2014).
  - 11 Wash.—*State v. Talley*, 122 Wash. 2d 192, 858 P.2d 217 (1993).
- Enhancement statute**
- A statute increasing the penalty for certain harassment crimes if they are committed with "ill will, hatred or bias toward, and with a purpose to intimidate an individual or group of individuals because of race, color, religion, sexual orientation or ethnicity," punishes conduct, not expression; thus, the prosecution of the defendant under the statute does not violate the defendant's right to freedom of speech.
- N.J.—*State v. Mortimer*, 135 N.J. 517, 641 A.2d 257 (1994).
- A.L.R. Library**
- Validity, construction, and effect of "hate crimes" statutes, "ethnic intimidation" statutes, or the like, 22 A.L.R.5th 261.
- 12 Wash.—*State v. Talley*, 122 Wash. 2d 192, 858 P.2d 217 (1993).
  - 13 Fla.—*Dobbins v. State*, 605 So. 2d 922 (Fla. 5th DCA 1992), decision approved, 631 So. 2d 303 (Fla. 1994).
  - 14 N.Y.—*People v. Miccio*, 155 Misc. 2d 697, 589 N.Y.S.2d 762 (N.Y. City Crim. Ct. 1992).
  - 15 N.J.—*State v. Vawter*, 136 N.J. 56, 642 A.2d 349 (1994).
  - 16 N.Y.—*People v. Mulqueen*, 155 Misc. 2d 632, 589 N.Y.S.2d 246 (Dist. Ct. 1992).
  - 17 U.S.—*U.S. v. J.H.H.*, 22 F.3d 821, 39 Fed. R. Evid. Serv. 373 (8th Cir. 1994).
  - 18 U.S.—*Council for Life Coalition v. Reno*, 856 F. Supp. 1422 (S.D. Cal. 1994).

## 16A C.J.S. Constitutional Law § 845

Corpus Juris Secundum | June 2021 Update

### Constitutional Law

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### PART III. Overview of Protected Personal Rights and Freedoms; Police Power

#### IX. Personal, Civil, and Political Rights and Freedoms

##### D. Other Particular Rights, Freedoms, and Interests

##### 3. Property Rights and Interests

## § 845. Constitutional protection of property rights and interests, generally

[Topic Summary](#) | [References](#) | [Correlation Table](#)

### West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#)  1108, 1109

**The right of private property is a fundamental, sacred, natural, inherent, and inalienable right which is protected by the federal and state constitutions.**

The right of private property is a fundamental,<sup>1</sup> sacred,<sup>2</sup> natural, inherent, and inalienable right,<sup>3</sup> the protection of which is one of the most important purposes of government.<sup>4</sup> It is a common law right,<sup>5</sup> which existed before the adoption of the federal and state constitutions,<sup>6</sup> and is not dependent on them for its existence.<sup>7</sup> Property interests are created and their dimensions are defined by existing rules or understandings that stem from an independent source such as state law, that is, rules or understandings that secure benefits and that support claims of entitlement to those benefits.<sup>8</sup> To insure their continuance, however, property interests are guaranteed by the federal and by the various state constitutions.<sup>9</sup>

The constitutional provisions for the protection of property should be liberally construed in favor of the right of property.<sup>10</sup> Protection of the right to property is not dependent on the value<sup>11</sup> or amount of the property held.<sup>12</sup> The right may not be

submitted to vote and depends on the outcome of no election.<sup>13</sup> The right to enjoy property without unlawful deprivation is a personal right regardless of the property in question.<sup>14</sup>

The right to private property and its incidents are embraced within the guaranty of liberty,<sup>15</sup> but the right to own and enjoy property is no more sacred than personal liberty or human rights.<sup>16</sup> A person has the right to be free from the unauthorized actions of government officials which substantially impair the person's property interests,<sup>17</sup> and constitutional protections against governmental intrusion are not dependent on ownership or possession but on a person's claim to privacy of the person's property or home.<sup>18</sup>

Under constitutional provisions, no person can be deprived of property except by the person's own consent<sup>19</sup> or the law of the land<sup>20</sup> or except for very urgent reasons.<sup>21</sup> Furthermore, the constitutional guaranties of property exclude arbitrary restrictions on property rights,<sup>22</sup> and all statutes and ordinances which violate the constitutional guaranties are null and void.<sup>23</sup> Furthermore, in some jurisdictions, the guaranty extends to individual interference as well as to legislative encroachment.<sup>24</sup> However, a statute does not deprive a person of property unless it prevents the person from doing an act which the person desires to do or diminishes the enjoyment or profit which the person would otherwise derive from the property.<sup>25</sup> Moreover, without violating the guaranty of property, the legislature may make special provisions for the security of life and limb and leave property to the protection of the common law.<sup>26</sup>

### ***Civil rights in property.***

The Thirteenth Amendment to the Federal Constitution prohibits all discrimination, public and private, in the sale or rental of property.<sup>27</sup> However, the opportunity to acquire an interest in property is not a civil right within the meaning of a constitutional provision prohibiting discrimination in civil rights because of race, color, creed, and religion.<sup>28</sup>

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### Footnotes

- 1 Md.—*Canaj, Inc. v. Baker and Division Phase III, LLC*, 391 Md. 374, 893 A.2d 1067 (2006).  
N.Y.—*1234 Broadway LLC v. Feng Chai Lin*, 25 Misc. 3d 476, 883 N.Y.S.2d 864 (N.Y. City Civ. Ct. 2009).  
Tex.—*Hearts Bluff Game Ranch, Inc. v. State*, 381 S.W.3d 468 (Tex. 2012), cert. denied, 133 S. Ct. 1999, 185 L. Ed. 2d 867 (2013).  
**Relation to other rights**  
Where the right to own property is recognized in a free government, practically all other rights become worthless if the government possesses uncontrollable power over a citizen's property.  
Cal.—*House v. Los Angeles County Flood Control Dist.*, 25 Cal. 2d 384, 153 P.2d 950 (1944).
- 2 Ala.—*Smith v. Smith*, 254 Ala. 404, 48 So. 2d 546 (1950).  
Wis.—*In re Guardianship of Colliton*, 41 Wis. 2d 487, 164 N.W.2d 480 (1969).
- 3 Ark.—*Poole v. State*, 244 Ark. 1222, 428 S.W.2d 628 (1968).  
Idaho—*Newland v. Child*, 73 Idaho 530, 254 P.2d 1066 (1953).  
N.C.—*Carolina Beach Fishing Pier, Inc. v. Town of Carolina Beach*, 274 N.C. 362, 163 S.E.2d 363 (1968).  
Tex.—*Eggemeyer v. Eggemeyer*, 554 S.W.2d 137 (Tex. 1977).  
As to natural rights, generally, see § 721.
- 4 Tex.—*Eggemeyer v. Eggemeyer*, 554 S.W.2d 137 (Tex. 1977).
- 5 Iowa—*May's Drug Stores v. State Tax Commission*, 242 Iowa 319, 45 N.W.2d 245 (1950).  
N.C.—*Carolina Beach Fishing Pier, Inc. v. Town of Carolina Beach*, 274 N.C. 362, 163 S.E.2d 363 (1968).  
Tex.—*Eggemeyer v. Eggemeyer*, 554 S.W.2d 137 (Tex. 1977).

- 6 U.S.—*Grubel v. MacLaughlin*, 6 V.I. 490, 286 F. Supp. 24 (D.V.I. 1968).  
Ark.—*Blundell v. City of West Helena*, 258 Ark. 123, 522 S.W.2d 661 (1975).  
N.C.—*Carolina Beach Fishing Pier, Inc. v. Town of Carolina Beach*, 274 N.C. 362, 163 S.E.2d 363 (1968).  
Tex.—*Eggemeyer v. Eggemeyer*, 554 S.W.2d 137 (Tex. 1977).
- 7 U.S.—*Culp v. U. S.*, 131 F.2d 93 (C.C.A. 8th Cir. 1942).  
Ark.—*Blundell v. City of West Helena*, 258 Ark. 123, 522 S.W.2d 661 (1975).  
Minn.—*Thiede v. Town of Scandia Valley*, 217 Minn. 218, 14 N.W.2d 400 (1944).
- 8 U.S.—*Leis v. Flynt*, 439 U.S. 438, 99 S. Ct. 698, 58 L. Ed. 2d 717 (1979).  
Cal.—*Healdsburg Police Officers Assn. v. City of Healdsburg*, 57 Cal. App. 3d 444, 129 Cal. Rptr. 216 (1st Dist. 1976).  
Mass.—*School Committee of Hatfield v. Board of Ed.*, 372 Mass. 513, 363 N.E.2d 237 (1977).
- 9 U.S.—*Terrace v. Thompson*, 263 U.S. 197, 44 S. Ct. 15, 68 L. Ed. 255 (1923).  
Cal.—*People v. Byers*, 90 Cal. App. 3d 140, 153 Cal. Rptr. 249 (3d Dist. 1979).  
Fla.—*Palm Beach Mobile Homes, Inc. v. Strong*, 300 So. 2d 881 (Fla. 1974).  
N.H.—*Buskey v. Town of Hanover*, 133 N.H. 318, 577 A.2d 406 (1990).  
Tex.—*Cooper v. Cooper*, 513 S.W.2d 229 (Tex. Civ. App. Houston 1st Dist. 1974).

#### **State and federal provisions compared**

(1) The provisions of a state constitution guarantee no greater rights to state property owners than do their federal counterparts.

- U.S.—*Pandol & Sons v. Agricultural Labor Relations Bd. of California*, 429 U.S. 802, 97 S. Ct. 34, 50 L. Ed. 2d 63 (1976).  
Cal.—*Agricultural Labor Relations Bd. v. Superior Court*, 16 Cal. 3d 392, 128 Cal. Rptr. 183, 546 P.2d 687 (1976).

(2) The state constitutional provision pertaining to the right of property was intended to give a "far-reaching new protection" to the right of citizens to own and control private property; such provision goes beyond the Federal Constitution in limiting the power of government to regulate private property.

- La.—*State v. 1971 Green GMC Van*, 354 So. 2d 479 (La. 1977).  
10 U.S.—*Knoll Associates, Inc. v. F. T. C.*, 397 F.2d 530 (7th Cir. 1968).  
11 Md.—*Easter v. Dundalk Holding Co.*, 199 Md. 303, 86 A.2d 404 (1952).  
12 Fla.—*Hamilton v. Williams*, 145 Fla. 697, 200 So. 80 (1941).  
13 U.S.—*Lucas v. Forty-Fourth General Assembly of State of Colo.*, 377 U.S. 713, 84 S. Ct. 1459, 12 L. Ed. 2d 632 (1964).  
14 U.S.—*Lynch v. Household Finance Corp.*, 405 U.S. 538, 92 S. Ct. 1113, 31 L. Ed. 2d 424 (1972).  
15 Mass.—*General Outdoor Advertising Co. v. Department of Public Works*, 289 Mass. 149, 193 N.E. 799 (1935).  
Neb.—*Louis Finocchiaro, Inc. v. Nebraska Liquor Control Com'n*, 217 Neb. 487, 351 N.W.2d 701 (1984).  
N.J.—*N. T. Hegeman Co. v. Mayor and Council of Borough of River Edge*, 6 N.J. Super. 495, 69 A.2d 767 (Law Div. 1949).

#### **Use of property**

The right of every one to use his or her property in his or her own way and for his or her own purposes, subject to the restraints necessary for the common good, is a liberty and property right.

- Ill.—*Greyhound Lines, Inc. v. City of Chicago*, 24 Ill. App. 3d 718, 321 N.E.2d 293 (1st Dist. 1974).  
Wash.—*Hauser v. Arness*, 44 Wash. 2d 358, 267 P.2d 691 (1954).

As to personal liberty, generally, see §§ 777 et seq.

- 16 Mass.—*Bamel v. Building Com'r of Brookline*, 250 Mass. 82, 145 N.E. 272 (1924).  
N.Y.—*People v. Caponigri*, 169 Misc. 9, 6 N.Y.S.2d 577 (Magis. Ct. 1938).  
17 U.S.—*Greene v. McElroy*, 360 U.S. 474, 79 S. Ct. 1400, 3 L. Ed. 2d 1377 (1959).  
18 Haw. *State v. Matias*, 51 Haw. 62, 451 P.2d 257 (1969).  
19 U.S.—*Mendez v. Murdock*, 83 F. Supp. 630 (W.D. Mo. 1949).  
N.C.—*Smith v. Keator*, 285 N.C. 530, 206 S.E.2d 203 (1974).

#### **Waiver of constitutional protections**

An owner's basic right to use and enjoy the fruits of his or her property cannot be conditioned on waiving constitutional rights under the state and federal constitutions; thus, to compel a property owner to let property

lie vacant and to prohibit him or her from selling it, unless the owner consents to a warrantless search, is to require involuntary consent in violation of the basic right to use and enjoy the fruits of property.

Cal.—*Currier v. City of Pasadena*, 48 Cal. App. 3d 810, 121 Cal. Rptr. 913 (2d Dist. 1975).

N.C.—*Smith v. Keator*, 285 N.C. 530, 206 S.E.2d 203 (1974).

Wis.—*In re Guardianship of Colliton*, 41 Wis. 2d 487, 164 N.W.2d 480 (1969).

Del.—*Garden Court Apartments v. Hartnett*, 45 Del. 1, 65 A.2d 231 (Super. Ct. 1949).

Iowa—*May's Drug Stores v. State Tax Commission*, 242 Iowa 319, 45 N.W.2d 245 (1950).

N.H.—*Metzger v. Town of Brentwood*, 117 N.H. 497, 374 A.2d 954 (1977) (overruled on other grounds by, *Boulders at Strafford, LLC v. Town of Strafford*, 153 N.H. 633, 903 A.2d 1021 (2006)).

Cal.—*Selby v. Oakdale Irr. Dist.*, 140 Cal. App. 171, 35 P.2d 125 (3d Dist. 1934).

N.H.—*Kennedy v. Town of Sunapee*, 147 N.H. 79, 784 A.2d 685 (2001).

N.C.—*Clinard v. City of Winston-Salem*, 217 N.C. 119, 6 S.E.2d 867, 126 A.L.R. 634 (1940).

#### **Sexual offender registration statute**

A sexual offender classification and registration statute does not infringe upon the constitutional right to acquire or protect property; community notification is based upon the geographic area around the offender's residence; thus, before the community can be notified, the offender must have obtained a temporary or permanent residence.

Ohio—*State v. Williams*, 88 Ohio St. 3d 513, 2000-Ohio-428, 728 N.E.2d 342 (2000).

#### **Guardianship of property**

Without infringing the right of property, the legislature may authorize the appointment of a guardian or conservator to assume the control and management of property of a person of unsound mind.

Ohio—*In re Joyce*, 19 Ohio Op. 506, 32 Ohio L. Abs. 553, 5 Ohio Supp. 16 (Prob. Ct. 1940).

Fla.—*Spafford v. Brevard County*, 92 Fla. 617, 110 So. 451 (1926).

N.J.—*Cameron v. International Alliance of Theatrical Stage Emp. and Moving Picture Operators of U. S. and Canada, Local Union No. 384, of Hudson County*, 118 N.J. Eq. 11, 176 A. 692, 97 A.L.R. 594 (Ct. Err. & App. 1935).

N.Y.—*Headley v. City of Rochester*, 272 N.Y. 197, 5 N.E.2d 198 (1936).

Mass.—*In re Opinion of the Justices*, 251 Mass. 569, 147 N.E. 681 (1925).

U.S.—*Ficklin v. Sabatini*, 378 F. Supp. 19 (E.D. Pa. 1974).

N.Y.—*Dorsey v. Stuyvesant Town Corp.*, 299 N.Y. 512, 87 N.E.2d 541, 14 A.L.R.2d 133 (1949).

As to property rights as civil rights, see C.J.S., *Civil Rights* §§ 106 to 111.

## 16A C.J.S. Constitutional Law § 846

Corpus Juris Secundum | June 2021 Update

### Constitutional Law

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### PART III. Overview of Protected Personal Rights and Freedoms; Police Power

#### IX. Personal, Civil, and Political Rights and Freedoms

#### D. Other Particular Rights, Freedoms, and Interests

#### 3. Property Rights and Interests

## § 846. Nature and extent of property rights

[Topic Summary](#) | [References](#) | [Correlation Table](#)

### West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#)  1109, 1112(1)

**The constitutional right of private property embraces every species of property recognized by law with all rights incident thereto and is not limited to the protection of tangible property but extends to intangible property as well.**

The constitutional right of private property embraces every species of property recognized by law with all rights incident thereto<sup>1</sup> and is not limited to the protection of tangible property but extends to intangible property as well.<sup>2</sup> As protected by the various constitutions, property is more than a mere thing which a person owns;<sup>3</sup> indeed, property, in the constitutional sense, is not the physical thing itself but rather is the group of rights which the owner of the thing has with respect to it.<sup>4</sup> The term property is broad enough to offer protection to an objective expectancy of the continuance of an interest which has initially been conferred by the State,<sup>5</sup> but whether a constitutional protection attaches depends upon the relative weights of the private interest affected and the governmental function involved and not upon assignment of meaning to the word property.<sup>6</sup>

The guaranty embraces the right to acquire,<sup>7</sup> possess,<sup>8</sup> use,<sup>9</sup> enjoy,<sup>10</sup> protect,<sup>11</sup> lease,<sup>12</sup> and dispose of,<sup>13</sup> or not dispose of, property.<sup>14</sup> The right to alienate one's property, however, is not a fundamental right.<sup>15</sup> One may devote his or her property to

any legitimate use<sup>16</sup> provided the person does not violate any provisions of the federal and state constitutions or violate any constitutional laws or regulations.<sup>17</sup>

On the other hand, the constitutional guaranties do not secure to any person the right to acquire property in anything that is not the subject of private property by law, or the right of disposing of property that has not been duly acquired under the law of the land,<sup>18</sup> nor does the guaranty extend to property to which the complaining party has no title.<sup>19</sup> Furthermore, the State is not required to grant all the traditional incidences of property rights where some degree of interest has been granted.<sup>20</sup>

Various interests which are protected under the constitutional right of private property include the right to a nonconforming use under a zoning ordinance<sup>21</sup> and the right of a member of a nonprofit organization to a share of the organization's properties.<sup>22</sup> Other interests which are not property so protected include the right to continued employment,<sup>23</sup> the right to reside on one's property,<sup>24</sup> the right to the illegal acquisition of contraband,<sup>25</sup> a license or permit to operate a motor vehicle,<sup>26</sup> the interests of a father in having his child bear his surname,<sup>27</sup> the right of a public official not to have his or her office terminated,<sup>28</sup> and the right of a defendant to destroy or dispose of evidence.<sup>29</sup>

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#### Footnotes

- 1 Neb.—*Louis Finocchiaro, Inc. v. Nebraska Liquor Control Com'n*, 217 Neb. 487, 351 N.W.2d 701 (1984).
- 2 Cal.—*Equitable Savings & Loan Ass'n v. Superior Court*, 230 P.2d 119 (Cal. App. 2d Dist. 1951), certified question accepted, (Aug. 16, 1951).  
Ohio—*Papatheodoro v. State Dept. of Liquor Control*, 69 Ohio L. Abs. 556, 118 N.E.2d 713 (C.P. 1954).
- 3 U.S.—*U.S. v. Carolene Products Co.*, 7 F. Supp. 500 (S.D. Ill. 1934).  
Me.—*Boothby v. City of Westbrook*, 138 Me. 117, 23 A.2d 316 (1941).
- 4 N.H.—*Hughes v. New Hampshire Div. of Aeronautics*, 152 N.H. 30, 871 A.2d 18 (2005).  
N.J.—*Westfield Centre Service, Inc. v. Cities Service Oil Co.*, 86 N.J. 453, 432 A.2d 48 (1981).  
**Bundle of rights**  
Md.—*Evans v. Burruss*, 401 Md. 586, 933 A.2d 872 (2007).
- 5 Ill.—*Kraut v. Rachford*, 51 Ill. App. 3d 206, 9 Ill. Dec. 240, 366 N.E.2d 497 (1st Dist. 1977).
- 6 U.S.—*U.S. v. Husband R. (Roach)*, 453 F.2d 1054 (5th Cir. 1971).
- 7 La.—*Parish of St. Charles v. R.H. Creager, Inc.*, 55 So. 3d 884 (La. Ct. App. 5th Cir. 2010), writ denied, 60 So. 3d 1250 (La. 2011).  
As to the ownership of property and incidents thereof, see C.J.S., Property §§ 38 to 47.
- 8 Cal.—*People v. Freitas*, 179 Cal. App. 4th 747, 102 Cal. Rptr. 3d 51 (3d Dist. 2009).
- 9 Ill.—*Napleton v. Village of Hinsdale*, 229 Ill. 2d 296, 322 Ill. Dec. 548, 891 N.E.2d 839 (2008).  
La.—*Parish of St. Charles v. R.H. Creager, Inc.*, 55 So. 3d 884 (La. Ct. App. 5th Cir. 2010), writ denied, 60 So. 3d 1250 (La. 2011).  
Mass.—*Haufler v. Zotos*, 446 Mass. 489, 845 N.E.2d 322 (2006).  
Tex.—*Hearts Bluff Game Ranch, Inc. v. State*, 381 S.W.3d 468 (Tex. 2012), cert. denied, 133 S. Ct. 1999, 185 L. Ed. 2d 867 (2013).
- 10 La.—*Parish of St. Charles v. R.H. Creager, Inc.*, 55 So. 3d 884 (La. Ct. App. 5th Cir. 2010), writ denied, 60 So. 3d 1250 (La. 2011).  
Mass.—*Haufler v. Zotos*, 446 Mass. 489, 845 N.E.2d 322 (2006).  
Pa.—*Township of Exeter v. Zoning Hearing Bd. of Exeter Tp.*, 599 Pa. 568, 962 A.2d 653 (2009).  
Tex.—*Hearts Bluff Game Ranch, Inc. v. State*, 381 S.W.3d 468 (Tex. 2012), cert. denied, 133 S. Ct. 1999, 185 L. Ed. 2d 867 (2013).
- 11 U.S.—*Boddie v. Connecticut*, 401 U.S. 371, 91 S. Ct. 780, 28 L. Ed. 2d 113 (1971).  
La.—*Parish of St. Charles v. R.H. Creager, Inc.*, 55 So. 3d 884 (La. Ct. App. 5th Cir. 2010), writ denied, 60 So. 3d 1250 (La. 2011).

**Right to defend property with reasonable force**

Cal.—*Kentucky Fried Chicken of Cal., Inc. v. Superior Court*, 14 Cal. 4th 814, 59 Cal. Rptr. 2d 756, 927 P.2d 1260 (1997).

U.S.—*Fox Film Corp. v. Trumbull*, 7 F.2d 715 (D. Conn. 1925).

La.—*Parish of St. Charles v. R.H. Creager, Inc.*, 55 So. 3d 884 (La. Ct. App. 5th Cir. 2010), writ denied, 60 So. 3d 1250 (La. 2011).

**In manner as owner pleases**

Pa.—*Matter of Caine*, 490 Pa. 24, 415 A.2d 13 (1980).

**Arson statute**

An arson statute requiring willfulness and malice is not an unconstitutional restraint on the right of a property owner to dispose of his or her property.

S.C.—*State v. Leach*, 282 S.C. 178, 318 S.E.2d 267 (1984).

**Undivided interest**

A statute prohibiting the full owner of an undivided interest in property, subject to usufruct, from partitioning the property by licitation did not deprive the full owner of his constitutional right to dispose of the property since he had the unlimited right to sell his undivided interest in the property to any willing purchaser.

La.—*Pasternack v. Samuels*, 415 So. 2d 211 (La. 1982).

Cal.—*Raab v. Casper*, 51 Cal. App. 3d 866, 124 Cal. Rptr. 590 (3d Dist. 1975).

U.S.—*National Western Life Ins. Co. v. Commodore Cove Imp. Dist.*, 678 F.2d 24 (5th Cir. 1982).

**Right to use lawfully regulated property as one wishes not fundamental right**

Mass.—*Fragopoulos v. Rent Control Bd. of Cambridge*, 408 Mass. 302, 557 N.E.2d 1153 (1990).

Fla.—*Miller v. MacGill*, 297 So. 2d 573 (Fla. 1st DCA 1974).

Ill.—*Talarico v. Cook County*, 2 Ill. App. 3d 47, 275 N.E.2d 776 (1st Dist. 1971).

Minn.—*Twin City Candy & Tobacco Co. v. A. Weisman Co.*, 276 Minn. 225, 149 N.W.2d 698 (1967).

Pa.—*Com. v. National Gettysburg Battlefield Tower, Inc.*, 8 Pa. Commw. 231, 302 A.2d 886 (1973), *aff'd*, 454 Pa. 193, 311 A.2d 588 (1973).

Pa.—*Forks Tp. Bd. of Sup'rs v. George Calantoni & Sons, Inc.*, 6 Pa. Commw. 521, 297 A.2d 164 (1972).

U.S.—*Hudson County Water Co. v. McCarter*, 209 U.S. 349, 28 S. Ct. 529, 52 L. Ed. 828 (1908).

N.Y.—*Triangle Mint Corp. v. Horgan*, 133 Misc. 802, 233 N.Y.S. 570 (Mun. Ct. 1929).

N.D.—*Neer v. State Live Stock Sanitary Board*, 40 N.D. 340, 168 N.W. 601 (1918).

N.J.—*Sixty-Seven South Munn v. Board of Public Utility Com'rs of New Jersey*, 106 N.J.L. 45, 147 A. 735 (N.J. Sup. Ct. 1929), *aff'd*, 107 N.J.L. 386, 152 A. 920 (N.J. Ct. Err. & App. 1930).

Pa.—*Kennedy v. Meyer*, 259 Pa. 306, 103 A. 44 (1918).

U.S.—*Gotkin v. Miller*, 514 F.2d 125 (2d Cir. 1975).

Ill.—*Douglas v. Village of Melrose Park*, 389 Ill. 98, 58 N.E.2d 864 (1945).

Ohio—*Randolph v. First Baptist Church of Lockland*, 53 Ohio Op. 288, 68 Ohio L. Abs. 100, 120 N.E.2d 485 (C.P. 1954).

U.S.—*Johnson v. Harvey*, 382 F. Supp. 1043 (E.D. Tex. 1974), *aff'd*, 516 F.2d 898 (5th Cir. 1975).

U.S.—*U.S. v. Greenberg*, 894 F. Supp. 2d 1039 (S.D. Ohio 2012) (sex offender laws regarding residency restriction).

La.—*State v. 1971 Green GMC Van*, 354 So. 2d 479 (La. 1977).

N.C.—*State v. Sullivan*, 201 N.C. App. 540, 687 S.E.2d 504 (2009).

Ariz.—*Laks v. Laks*, 25 Ariz. App. 58, 540 P.2d 1277 (Div. 2 1975).

N.Y.—*Hammer v. Veteran*, 86 Misc. 2d 1056, 386 N.Y.S.2d 170 (Sup 1975), judgment *aff'd*, 53 A.D.2d 629, 385 N.Y.S.2d 1017 (2d Dep't 1976).

Fla.—*State v. English*, 308 So. 2d 636 (Fla. 3d DCA 1975).

## 16A C.J.S. Constitutional Law § 847

Corpus Juris Secundum | June 2021 Update

### Constitutional Law

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### PART III. Overview of Protected Personal Rights and Freedoms; Police Power

#### IX. Personal, Civil, and Political Rights and Freedoms

#### D. Other Particular Rights, Freedoms, and Interests

#### 3. Property Rights and Interests

## § 847. Limitations and restrictions on property rights; police power

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### West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#)  1111

**The right of private property, as guaranteed by the various constitutions, is not an absolute right; it is subject to the legitimate exercise of the police power of the State, and thereunder, the State may enact laws regulating, restraining, and prohibiting those things which are harmful to the well-being of the people although such regulation, restraint, and prohibition interferes with the property of individuals.**

The right of private property, as guaranteed by the various constitutions, is not an absolute right.<sup>1</sup> It is subject to the limitation that property may not be so used as to injure the rights of others<sup>2</sup> or the safety, health, comfort, or general welfare of the community.<sup>3</sup> Property may be used even by its owner only in accordance with law.<sup>4</sup> The constitutional right of property is subject to the power of the government to prescribe reasonable limitations and regulations in the interest of the common good and general welfare<sup>5</sup> and even in the interests of freedom of speech, assembly, and petition.<sup>6</sup> It is also subject to the government's powers of taxation<sup>7</sup> and eminent domain,<sup>8</sup> both of which must be for a public purpose.<sup>9</sup>

The constitutional right of property is subject to the legitimate exercise of the police power of the State, and thereunder, the State may enact laws regulating, restraining, and prohibiting those things which are harmful to the well-being of the people although

such regulation, restraint, and prohibition interfere with the property of individuals.<sup>10</sup> The public interest is to be preferred over property interests even to the extent of their destruction when necessary.<sup>11</sup> The constitutional guaranty, therefore, affords no protection to one holding property dangerous to public health, safety, or morals.<sup>12</sup> Real, as well as personal, property comes within the scope of the police power.<sup>13</sup>

The police power is an incident of title to private property,<sup>14</sup> and a state may, under its police power, regulate how property may be used.<sup>15</sup> Application of the police power is not limited to those property rights which are deemed harmful,<sup>16</sup> and it is no objection to its reasonable exercise that private property is impaired in value or otherwise adversely affected.<sup>17</sup> While the taking or damaging of private property for public use must be compensated,<sup>18</sup> any loss occasioned by the invasion of private property rights by the State in the legitimate exercise of the police power is considered loss without injury in the legal sense,<sup>19</sup> or in the view of the law, the owner is compensated for the owner's immediate loss by participation in the general benefits which the state action is designed to secure.<sup>20</sup>

Pursuant to the exercise of the police power, the right of private property may be limited, restricted, and impaired so as to promote the general welfare,<sup>21</sup> as well as to promote and improve the state of public health,<sup>22</sup> public safety and order,<sup>23</sup> and public morals<sup>24</sup> and in order to prevent or suppress the perpetration of fraud.<sup>25</sup> When the police power is so asserted fairly and impartially, the courts will not substitute their judgment for that of the public officers charged with a duty concerning such matters.<sup>26</sup>

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## Footnotes

- 1 U.S.—*U. S. v. Baltimore & O. R. Co.*, 333 U.S. 169, 68 S. Ct. 494, 92 L. Ed. 618 (1948).  
Me.—*Buck v. Kilgore*, 298 A.2d 107 (Me. 1972).  
Mass.—*Opinion of the Justices to the House of Representatives*, 368 Mass. 857, 333 N.E.2d 414 (1975).  
Minn.—*Federal Distillers, Inc. v. State*, 304 Minn. 28, 229 N.W.2d 144 (1975).  
N.J.—*B. Jeselsohn, Inc. v. Atlantic City*, 70 N.J. 238, 358 A.2d 797, 19 U.C.C. Rep. Serv. 497 (1976).  
Tex.—*City of Breckenridge v. Cozart*, 478 S.W.2d 162 (Tex. Civ. App. Eastland 1972), writ refused n.r.e., (July 26, 1972).  
**Reasonable conditions**  
Just as the State may create a property interest that is entitled to constitutional protection, the State has the power to condition the permanent retention of that property right on the performance of reasonable conditions that indicate a present intention to retain the interest.  
U.S.—*Texaco, Inc. v. Short*, 454 U.S. 516, 102 S. Ct. 781, 70 L. Ed. 2d 738 (1982).  
Kan.—*Hawley v. Kansas Dept. of Agriculture*, 281 Kan. 603, 132 P.3d 870 (2006).  
**No right to produce maximum profits**  
There is no constitutional imperative that a property owner be permitted to exploit his or her interest in such a way as to produce maximum profits.  
N.J.—*Edgewater Inv. Associates v. Borough of Edgewater*, 103 N.J. 227, 510 A.2d 1178 (1986).  
2 Me.—*State v. Lewis*, 406 A.2d 886 (Me. 1979).  
Minn.—*Federal Distillers, Inc. v. State*, 304 Minn. 28, 229 N.W.2d 144 (1975).  
Ohio—*State v. Acme Scrap Iron and Metal*, 49 Ohio App. 2d 371, 3 Ohio Op. 3d 444, 361 N.E.2d 250 (11th Dist. Ashtabula County 1974).  
Pa.—*Com. v. National Gettysburg Battlefield Tower, Inc.*, 8 Pa. Commw. 231, 302 A.2d 886 (1973), aff'd, 454 Pa. 193, 311 A.2d 588 (1973).  
Tex.—*Houston Compressed Steel Corp. v. State*, 456 S.W.2d 768 (Tex. Civ. App. Houston 1st Dist. 1970).  
**Negligent conduct**

The constitutional protection which the Federal Constitution provides for private property does not extend to negligent conduct.

U.S.—*Lenoir v. Porters Creek Watershed Dist.*, 586 F.2d 1081 (6th Cir. 1978).

Ark.—*McCammon v. Boyer*, 285 Ark. 288, 686 S.W.2d 421 (1985).

Cal.—*People v. Byers*, 90 Cal. App. 3d 140, 153 Cal. Rptr. 249 (3d Dist. 1979).

Fla.—*Dickinson v. State*, 227 So. 2d 36 (Fla. 1969).

N.Y.—*Garvar v. City of New York*, 54 Misc. 2d 562, 282 N.Y.S.2d 1009 (Sup 1967).

U.S.—*U.S. v. Martini*, 42 F. Supp. 502 (S.D. Ala. 1941).

Ark.—*McCammon v. Boyer*, 285 Ark. 288, 686 S.W.2d 421 (1985).

Cal.—*Concerned Dog Owners of California v. City of Los Angeles*, 194 Cal. App. 4th 1219, 123 Cal. Rptr. 3d 774 (2d Dist. 2011).

Mass.—*Fragopoulos v. Rent Control Bd. of Cambridge*, 408 Mass. 302, 557 N.E.2d 1153 (1990).

N.J.—*State v. Schmid*, 84 N.J. 535, 423 A.2d 615 (1980).

Ohio—*State v. Williams*, 88 Ohio St. 3d 513, 2000-Ohio-428, 728 N.E.2d 342 (2000).

S.C.—*Quality Towing, Inc. v. City of Myrtle Beach*, 340 S.C. 29, 530 S.E.2d 369 (2000).

Pa.—*Com. v. Tate*, 495 Pa. 158, 432 A.2d 1382 (1981).

Cal.—*Watchtower Bible & Tract Soc. v. Los Angeles County*, 30 Cal. 2d 426, 182 P.2d 178 (1947).

Colo.—*Jackson v. City of Glenwood Springs*, 122 Colo. 323, 221 P.2d 1083 (1950).

Ky.—*Com. v. St. Matthews Gas & Elec. Shop*, 252 S.W.2d 673 (Ky. 1952).

Neb.—*Burlington Northern and Santa Fe Ry. Co. v. Chaulk*, 262 Neb. 235, 631 N.W.2d 131 (2001).

As to the power of taxation, generally, see C.J.S., *Taxation* §§ 7 to 10.

Neb.—*Burlington Northern and Santa Fe Ry. Co. v. Chaulk*, 262 Neb. 235, 631 N.W.2d 131 (2001).

N.C.—*Department of Transp. v. Rowe*, 353 N.C. 671, 549 S.E.2d 203 (2001).

#### **Manifest evil**

Even to prevent a manifest evil, larger limitations may not be imposed on previously existing rights incident to property except by the exercise of the right of eminent domain.

N.Y.—*Dente v. City of Mount Vernon*, 50 Misc. 2d 983, 272 N.Y.S.2d 65 (Sup 1966).

As to the nature and source of the power of eminent domain, generally, see C.J.S., *Eminent Domain* § 2.

Neb.—*Burger v. City of Beatrice*, 181 Neb. 213, 147 N.W.2d 784 (1967).

#### **Use of eminent domain to benefit public purpose**

A city's exercise of eminent domain power in the furtherance of an economic development plan satisfied the constitutional public use requirement, even though the city was not planning to open the condemned land to use by the general public, where the plan served the public purpose.

U.S.—*Kelo v. City of New London, Conn.*, 545 U.S. 469, 125 S. Ct. 2655, 162 L. Ed. 2d 439, 10 A.L.R. Fed. 2d 733 (2005).

U.S.—*St. Louis Poster Advertising Co. v. City of St. Louis*, 249 U.S. 269, 39 S. Ct. 274, 63 L. Ed. 599 (1919).

Cal.—*Agricultural Labor Relations Bd. v. Superior Court*, 16 Cal. 3d 392, 128 Cal. Rptr. 183, 546 P.2d 687 (1976).

Fla.—*Florida Canners Ass'n v. State, Dept. of Citrus*, 371 So. 2d 503 (Fla. 2d DCA 1979), decision aff'd, 406 So. 2d 1079 (Fla. 1981).

Neb.—*Eckstein v. City of Lincoln*, 202 Neb. 741, 277 N.W.2d 91 (1979).

N.J.—*Berkley Condominium Ass'n, Inc. v. Berkley Condominium Residences, Inc.*, 185 N.J. Super. 313, 448 A.2d 510 (Ch. Div. 1982).

Pa.—*Com. v. Tate*, 495 Pa. 158, 432 A.2d 1382 (1981).

#### **Right to housing**

Any legislative plan which implements the right to housing and does not constitutionally interfere with property rights as limited by human values should be legally acceptable.

N.J.—*Apartment House Council v. Mayor and Council of Borough of Ridgefield*, 123 N.J. Super. 87, 301 A.2d 484 (Law Div. 1973), judgment aff'd, 128 N.J. Super. 192, 319 A.2d 507 (App. Div. 1974).

As to the police power, generally, see §§ 699 to 720.

U.S.—*Miller v. Schoene*, 276 U.S. 272, 48 S. Ct. 246, 72 L. Ed. 568 (1928).

Ind.—*State ex rel. Mavity v. Tyndall*, 225 Ind. 360, 74 N.E.2d 914 (1947).

N.J.—*Spagnuolo v. Bonnet*, 16 N.J. 546, 109 A.2d 623 (1954).

N.Y.—[Kraushaar v. Zion](#), 188 Misc. 851, 63 N.Y.S.2d 359 (Sup 1946).

**Condition precedent**

Although each person holds his or her property subject to the governmental police power to destroy it if reasonably necessary to protect public health and safety, the actual existence of a public nuisance is an absolute condition precedent to the exercise of such power.

D.C.—[Miles v. District of Columbia](#), 354 F. Supp. 577 (D.D.C. 1973), judgment aff'd, 510 F.2d 188 (D.C. Cir. 1975).

12 Ark.—[Bell v. State](#), 212 Ark. 337, 205 S.W.2d 714 (1947).

Fla.—[In re Seven Barrels of Wine](#), 79 Fla. 1, 83 So. 627 (1920).

N.J.—[Spagnuolo v. Bonnet](#), 16 N.J. 546, 109 A.2d 623 (1954).

13 U.S.—[Edgar A. Levy Leasing Co. v. Siegel](#), 258 U.S. 242, 42 S. Ct. 289, 66 L. Ed. 595 (1922).

14 Conn.—[State v. Heller](#), 123 Conn. 492, 196 A. 337 (1937).

Ill.—[Sherman-Reynolds, Inc. v. Mahin](#), 47 Ill. 2d 323, 265 N.E.2d 640 (1970).

Iowa—[May's Drug Stores v. State Tax Commission](#), 242 Iowa 319, 45 N.W.2d 245 (1950).

15 Ark.—[McCammon v. Boyer](#), 285 Ark. 288, 686 S.W.2d 421 (1985).

Conn.—[Whittaker v. Zoning Bd. of Appeals of Town of Trumbull](#), 179 Conn. 650, 427 A.2d 1346 (1980).

N.Y.—[Dovman v. Yahashi](#), 109 Misc. 2d 484, 442 N.Y.S.2d 349 (App. Term 1981).

Pa.—[Parise v. Com., State Bd. of Funeral Directors](#), 52 Pa. Commw. 80, 415 A.2d 153 (1980).

S.C.—[Quality Towing, Inc. v. City of Myrtle Beach](#), 340 S.C. 29, 530 S.E.2d 369 (2000).

16 Mich.—[Board of Ed. of School Dist. of City of Detroit v. Michigan Bell Tel. Co.](#), 51 Mich. App. 488, 215 N.W.2d 704 (1974), judgment aff'd, 395 Mich. 1, 232 N.W.2d 633 (1975).

17 Cal.—[Nash v. City of Santa Monica](#), 37 Cal. 3d 97, 207 Cal. Rptr. 285, 688 P.2d 894 (1984).

Ill.—[Sherman-Reynolds, Inc. v. Mahin](#), 47 Ill. 2d 323, 265 N.E.2d 640 (1970).

Neb.—[Graham v. Graybar Elec. Co.](#), 158 Neb. 527, 63 N.W.2d 774 (1954).

**Individual profits subordinate to public welfare**

N.Y.—[Flax v. City of Rome](#), 57 Misc. 2d 905, 293 N.Y.S.2d 855 (Sup 1968).

18 C.J.S., Eminent Domain § 66.

19 U.S.—[Land Associates v. Metropolitan Airport Authority](#), 547 F. Supp. 1128 (M.D. Tenn. 1982), judgment aff'd, 712 F.2d 248 (6th Cir. 1983).

Idaho—[Johnston v. Boise City](#), 87 Idaho 44, 390 P.2d 291 (1964).

Ill.—[Sherman-Reynolds, Inc. v. Mahin](#), 47 Ill. 2d 323, 265 N.E.2d 640 (1970).

N.J.—[New Jersey Ass'n of Health Care Facilities v. Finley](#), 168 N.J. Super. 152, 402 A.2d 246 (App. Div. 1979), judgment aff'd, 83 N.J. 67, 415 A.2d 1147 (1980).

Tenn.—[Draper v. Haynes](#), 567 S.W.2d 462 (Tenn. 1978).

Tex.—[State v. Spartan's Industries, Inc.](#), 447 S.W.2d 407 (Tex. 1969).

20 Ill.—[Sherman-Reynolds, Inc. v. Mahin](#), 47 Ill. 2d 323, 265 N.E.2d 640 (1970).

N.J.—[City Council of City of Elizabeth v. Naturile](#), 136 N.J. Super. 213, 345 A.2d 363 (Law Div. 1975).

21 Ark.—[McCammon v. Boyer](#), 285 Ark. 288, 686 S.W.2d 421 (1985).

Fla.—[Golden v. McCarty](#), 337 So. 2d 388, 81 A.L.R.3d 1206 (Fla. 1976).

Ill.—[Village of Carpentersville v. Fiala](#), 98 Ill. App. 3d 1005, 54 Ill. Dec. 521, 425 N.E.2d 33 (2d Dist. 1981).

S.C.—[Quality Towing, Inc. v. City of Myrtle Beach](#), 340 S.C. 29, 530 S.E.2d 369 (2000).

**Fish and game regulations**

Fla.—[Sams v. Morris](#), 88 Fla. 162, 101 So. 206 (1924).

S.C.—[State v. Thompson](#), 349 S.C. 346, 563 S.E.2d 325 (2002).

S.D.—[State v. Pollock](#), 42 S.D. 360, 175 N.W. 557 (1919).

**Common social need**

It is a legislative function to determine the existence of common social need for the exertion of the sovereign police power, and an individual landowner has no just cause to complain thereof as invading the right of private property in the absence of arbitrary or capricious action.

N.J.—[Earruso v. Board of Health of East Hanover Tp., Morris County](#), 120 N.J.L. 463, 200 A. 755 (N.J. Sup. Ct. 1938).

**Realities of society**

The concept that an owner of property can, in all cases, do as the owner pleases with the owner's property is no longer in harmony with the realities of society.

- 22 Wis.—*State v. Deetz*, 66 Wis. 2d 1, 224 N.W.2d 407 (1974).  
 Conn.—*Aunt Hack Ridge Estates, Inc. v. Planning Commission of Town of Danbury*, 27 Conn. Supp. 74, 230 A.2d 45 (Super. Ct. 1967).  
 Fla.—*Golden v. McCarty*, 337 So. 2d 388, 81 A.L.R.3d 1206 (Fla. 1976).  
 Md.—*Erb v. Maryland Dept. of Environment*, 110 Md. App. 246, 676 A.2d 1017 (1996).  
 Mo.—*Deimeke v. State Highway Commission*, 444 S.W.2d 480 (Mo. 1969).  
**Destruction of diseased animals and plants**  
 U.S.—*Kelleher v. French*, 22 F.2d 341 (W.D. Va. 1927), *aff'd*, 278 U.S. 563, 49 S. Ct. 35, 73 L. Ed. 507 (1928).  
 Ohio—*Kroplin v. Truax*, 119 Ohio St. 610, 7 Ohio L. Abs. 110, 165 N.E. 498 (1929).  
**Protecting water supply**  
 Conn.—*State v. Heller*, 123 Conn. 492, 196 A. 337 (1937).  
 Vt.—*State v. Quattropiani*, 99 Vt. 360, 133 A. 352 (1926).  
**Rubbish and garbage removal**  
 Cal.—*Ex parte Pedrosian*, 124 Cal. App. 692, 13 P.2d 389 (4th Dist. 1932).  
 Mo.—*Valley Spring Hog Ranch Co. v. Plagmann*, 282 Mo. 1, 220 S.W. 1, 15 A.L.R. 266 (1920).  
 N.J.—*Earruso v. Board of Health of East Hanover Tp., Morris County*, 120 N.J.L. 463, 200 A. 755 (N.J. Sup. Ct. 1938).  
**Tick eradication**  
 Fla.—*Whitaker v. Parsons*, 80 Fla. 352, 86 So. 247 (1920).  
 Ga.—*Rowland v. Morris*, 152 Ga. 842, 111 S.E. 389 (1922).  
 23 Conn.—*Aunt Hack Ridge Estates, Inc. v. Planning Commission of Town of Danbury*, 27 Conn. Supp. 74, 230 A.2d 45 (Super. Ct. 1967).  
 Fla.—*Golden v. McCarty*, 337 So. 2d 388, 81 A.L.R.3d 1206 (Fla. 1976).  
 Ill.—*Midland Elec. Coal Corp. v. Knox County*, 1 Ill. 2d 200, 115 N.E.2d 275 (1953).  
 Mo.—*Deimeke v. State Highway Commission*, 444 S.W.2d 480 (Mo. 1969).  
 Va.—*Town of Leesburg v. Tavenner*, 196 Va. 80, 82 S.E.2d 597 (1954).  
**Possession of weapons by prisoner**  
 24 Cal.—*People v. Wells*, 68 Cal. App. 2d 476, 156 P.2d 979 (3d Dist. 1945).  
 Conn.—*Aunt Hack Ridge Estates, Inc. v. Planning Commission of Town of Danbury*, 27 Conn. Supp. 74, 230 A.2d 45 (Super. Ct. 1967).  
 Fla.—*Golden v. McCarty*, 337 So. 2d 388, 81 A.L.R.3d 1206 (Fla. 1976).  
 Mo.—*Deimeke v. State Highway Commission*, 444 S.W.2d 480 (Mo. 1969).  
 N.J.—*Spagnuolo v. Bonnet*, 16 N.J. 546, 109 A.2d 623 (1954).  
 N.C.—*McKinney v. Deneen*, 231 N.C. 540, 58 S.E.2d 107 (1950).  
**Prevention of cruelty to animals**  
 Colo.—*Bland v. People*, 32 Colo. 319, 76 P. 359 (1904).  
 Mass.—*Commonwealth v. Higgins*, 277 Mass. 191, 178 N.E. 536, 79 A.L.R. 1304 (1931).  
 N.H.—*State v. Prince*, 77 N.H. 581, 94 A. 966 (1915).  
 25 Cal.—*Chiyoko Ikuta v. Shunji K. Ikuta*, 97 Cal. App. 2d 787, 218 P.2d 854 (2d Dist. 1950).  
 Minn.—*State v. Swenson*, 172 Minn. 277, 215 N.W. 177, 54 A.L.R. 490 (1927).  
 S.D.—*State v. Reininger*, 59 S.D. 336, 239 N.W. 849 (1931).  
 26 Fla.—*William Murray Builders, Inc. v. City of Jacksonville*, 254 So. 2d 364 (Fla. 1st DCA 1971).

## 16A C.J.S. Constitutional Law § 848

Corpus Juris Secundum | June 2021 Update

### Constitutional Law

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### PART III. Overview of Protected Personal Rights and Freedoms; Police Power

#### IX. Personal, Civil, and Political Rights and Freedoms

##### D. Other Particular Rights, Freedoms, and Interests

##### 3. Property Rights and Interests

## § 848. Limitations and restrictions on property rights; police power—Constitutional limitations on exercise of police power

[Topic Summary](#) | [References](#) | [Correlation Table](#)

### West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#)  1110, 1112(1)

**The power of the legislature to regulate and restrict the right of private property under the police power is limited by the federal and state constitutions.**

The power of the legislature to regulate and restrict the right of private property under the police power is limited by the federal and state constitutions.<sup>1</sup> Police power enactments must be reasonable;<sup>2</sup> furthermore, a real and substantial<sup>3</sup> or rational nexus must exist between a restraint and a valid exercise of the power.<sup>4</sup> If this is not so, the statute cannot be sustained.<sup>5</sup> When the police power is asserted to regulate property, the courts will substitute their judgment for that of the public officers charged with a duty concerning such matters only when it clearly appears that their actions have no just foundation in reason or necessity.<sup>6</sup> Neither a statute nor an ordinance can be sustained which deprives one of the use of his or her property when such statute or ordinance is not reasonably comprehended within the scope of the police power.<sup>7</sup>

The legislature may not, under the guise of the police power, arbitrarily interfere with private property or impose unusual or unnecessary regulations on it.<sup>8</sup> Private property may not be confiscated under the guise of police regulations,<sup>9</sup> and the improper

exercise of the power of eminent domain is an infringement upon a citizen's constitutional right to own and possess property.<sup>10</sup> A public exigency will justify the legislature in restricting property rights to a certain extent without compensation,<sup>11</sup> but where the necessity of the interference with, or the appropriation of, private property under the police power passes away, the right to interfere with or appropriate it ceases.<sup>12</sup> Furthermore, the State is without authority to transfer one person's property to another.<sup>13</sup>

States and cities may enact land use restrictions or controls to enhance the quality of life by preserving the character and desirable aesthetic features of the locality, and zoning regulations may extend beyond strict considerations of health and safety and include aesthetic considerations.<sup>14</sup> There is some authority for the proposition that zoning solely for aesthetic purposes is not outside the scope of the police power; however, the aesthetic considerations which are subject to regulation must bear substantially on the economic, social, and cultural patterns of the community.<sup>15</sup>

***Property subject to police power of more than one municipality.***

Where one piece of property is subject to the police power of two municipalities, the constitutional right as owner of that property to use and enjoy it however one sees fit must prevail.<sup>16</sup>

**CUMULATIVE SUPPLEMENT**

**Cases:**

To comport with due process, a State may not impose anything more than minimal procedures on the refund of exactions dependent upon a conviction subsequently invalidated. [U.S.C.A. Const.Amend. 14](#). [Nelson v. Colorado](#), 137 S. Ct. 1249 (2017).

**[END OF SUPPLEMENT]**

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**Footnotes**

- 1 Ala.—[Parker v. Hall](#), 362 So. 2d 875, 99 A.L.R.3d 1014 (Ala. 1978).  
Ariz.—[Transamerica Title Ins. Co. v. City of Tucson](#), 23 Ariz. App. 385, 533 P.2d 693 (Div. 2 1975).  
Neb.—[U.S. Brewers' Ass'n, Inc. v. State](#), 192 Neb. 328, 220 N.W.2d 544 (1974).
- 2 Ohio—[Wymyslo v. Bartec, Inc.](#), 132 Ohio St. 3d 167, 2012-Ohio-2187, 970 N.E.2d 898 (2012).  
**Reasonable requirement**  
The requirement that the exercise of police power be reasonable mandates not only that the regulation relate to the purpose for which it was enacted but also that it not unreasonably deprive the owner of all beneficial use of his or her property.  
N.Y.—[Modjeska Sign Studios, Inc. v. Berle](#), 43 N.Y.2d 468, 402 N.Y.S.2d 359, 373 N.E.2d 255 (1977).  
**Power and right interdependent**  
The police power and the right to private property must be considered together as interdependent, one qualifying and limiting the other.  
N.H.—[Metzger v. Town of Brentwood](#), 117 N.H. 497, 374 A.2d 954 (1977) (overruled on other grounds by, [Boulders at Strafford, LLC v. Town of Strafford](#), 153 N.H. 633, 903 A.2d 1021 (2006)).
- 3 Ill.—[Midland Elec. Coal Corp. v. Knox County](#), 1 Ill. 2d 200, 115 N.E.2d 275 (1953).  
Neb.—[Stahla v. Board of Zoning Adjustment In and For Hall County](#), 186 Neb. 219, 182 N.W.2d 209 (1970).  
Ohio—[State ex rel. Kahler-Ellis Co. v. Cline](#), 69 Ohio L. Abs. 305, 125 N.E.2d 222 (C.P. 1954).  
Tex.—[City of Lubbock v. Stubbs](#), 278 S.W.2d 519 (Tex. Civ. App. Amarillo 1954), writ refused n.r.e.  
Wash.—[Hauser v. Arness](#), 44 Wash. 2d 358, 267 P.2d 691 (1954).

- 4 Mass.—[Consolidated Cigar Corp. v. Department of Public Health](#), 372 Mass. 844, 364 N.E.2d 1202 (1977).  
Neb.—[U.S. Brewers' Ass'n, Inc. v. State](#), 192 Neb. 328, 220 N.W.2d 544 (1974).  
**Property of prison inmates**  
A state prison rule prohibiting inmates from transferring property without authorization was rationally related to insuring the security of the institution and did not amount to a denial of the inmates' constitutional rights to the possession of property.  
U.S.—[Ford v. Schmidt](#), 577 F.2d 408, 3 Fed. R. Evid. Serv. 127 (7th Cir. 1978).
- 5 Colo.—[Western Power & Gas Co. v. Southeast Colorado Power Ass'n](#), 164 Colo. 344, 435 P.2d 219 (1967).  
**Monopoly or trade barrier**  
If it is apparent that a statute under the guise of police regulation does not tend to preserve public health, safety, or welfare but tends to stifle legitimate business by creating a monopoly or trade barrier, the statute is unconstitutional as an invasion of the property rights of the individual.  
Neb.—[U.S. Brewers' Ass'n, Inc. v. State](#), 192 Neb. 328, 220 N.W.2d 544 (1974).
- 6 Fla.—[Pinellas County v. Dynamic Inv., Inc.](#), 279 So. 2d 97 (Fla. 2d DCA 1973).
- 7 Cal.—[Sei Fujii v. State](#), 38 Cal. 2d 718, 242 P.2d 617 (1952).  
Ky.—[Parker v. Rash](#), 314 Ky. 609, 236 S.W.2d 687 (1951).  
Mass.—[Lyman v. Planning Bd. of Winchester](#), 352 Mass. 209, 224 N.E.2d 493 (1967).  
As to the scope of the police power, see § 702.
- 8 U.S.—[State of Washington ex rel. Seattle Title Trust Co. v. Roberge](#), 278 U.S. 116, 49 S. Ct. 50, 73 L. Ed. 210, 86 A.L.R. 654 (1928).  
Conn.—[Troiano v. Zoning Commission of Town of North Branford](#), 155 Conn. 265, 231 A.2d 536 (1967).  
Fla.—[Stokes v. City of Jacksonville](#), 276 So. 2d 200 (Fla. 1st DCA 1973).  
N.J.—[Brookchester, Inc., Section 1 v. Ligham](#), 17 N.J. 460, 111 A.2d 737 (1955).  
N.Y.—[Modjeska Sign Studios, Inc. v. Berle](#), 43 N.Y.2d 468, 402 N.Y.S.2d 359, 373 N.E.2d 255 (1977).  
Wash.—[Hauser v. Arness](#), 44 Wash. 2d 358, 267 P.2d 691 (1954).  
**Humane and lawful purpose**  
Where an individual, either for profit or otherwise, uses his or her private property for a humane and lawful purpose, and the regulatory authority makes no initial and conclusive showing that the use adversely affects the public welfare, no grounds of enforcement by such regulatory authority exists.  
Ohio—[State v. Picciochi](#), 16 Ohio Misc. 196, 45 Ohio Op. 2d 147, 241 N.E.2d 407 (C.P. 1968).  
**Beer and liquor distributorships**  
A statute which gave a commission wide discretion in regulating the establishment and termination of beer and liquor distributorships, which bore no relationship to promoting temperance or obedience to the law and which placed a severe burden upon any manufacturer who wanted to make any change in the distribution of the product, was an unreasonable invasion of the property rights of beer and liquor manufacturers and was, therefore, unconstitutional.  
Neb.—[U.S. Brewers' Ass'n, Inc. v. State](#), 192 Neb. 328, 220 N.W.2d 544 (1974).
- 9 Conn.—[Troiano v. Zoning Commission of Town of North Branford](#), 155 Conn. 265, 231 A.2d 536 (1967).  
N.Y.—[Lutheran Church In America v. City of New York](#), 35 N.Y.2d 121, 359 N.Y.S.2d 7, 316 N.E.2d 305 (1974).  
N.C.—[McKinney v. Deneen](#), 231 N.C. 540, 58 S.E.2d 107 (1950).  
Wis.—[Just v. Marinette County](#), 56 Wis. 2d 7, 201 N.W.2d 761 (1972).
- 10 Neb.—[Burger v. City of Beatrice](#), 181 Neb. 213, 147 N.W.2d 784 (1967).
- 11 U.S.—[Block v. Hirsh](#), 256 U.S. 135, 41 S. Ct. 458, 65 L. Ed. 865, 16 A.L.R. 165 (1921).
- 12 Cal.—[House v. Los Angeles County Flood Control Dist.](#), 25 Cal. 2d 384, 153 P.2d 950 (1944).
- 13 Okla.—[Oklahoma Water Resources Bd. v. Central Oklahoma Master Conservancy Dist.](#), 1968 OK 73, 464 P.2d 748 (Okla. 1968).
- 14 C.J.S., [Zoning and Land Planning](#) § 45.
- 15 C.J.S., [Zoning and Land Planning](#) § 45.
- 16 La.—[Cleco Power, LLC v. Beauregard Elec. Co-op., Inc.](#), 984 So. 2d 925 (La. Ct. App. 3d Cir. 2008), writ denied, 992 So. 2d 1014 (La. 2008).

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## 16A C.J.S. Constitutional Law § 849

Corpus Juris Secundum | June 2021 Update

### Constitutional Law

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### PART III. Overview of Protected Personal Rights and Freedoms; Police Power

#### IX. Personal, Civil, and Political Rights and Freedoms

#### D. Other Particular Rights, Freedoms, and Interests

#### 3. Property Rights and Interests

## § 849. Property devoted to public use

[Topic Summary](#) | [References](#) | [Correlation Table](#)

### West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#)  1109, 1112(1)

**Where an owner of property devotes it to a use in which the public has an interest, the owner must, to the extent of the interest acquired by the public, submit to control of the property by the public for the common good.**

Where an owner of property devotes it to a use in which the public has an interest, the owner must, to the extent of the interest acquired by the public, submit to control of the property by the public for the common good.<sup>1</sup> Accordingly, the right of the State to regulate public utilities is founded on the police power so that, without violating the constitutional private property guaranty, property engaged in public service may be subjected to reasonable regulation in the public interest.<sup>2</sup> The right of private property has been found not to be infringed by particular laws reasonably regulating various instrumentalities devoted to a public interest, such as carriers<sup>3</sup> and telephone and telegraph companies.<sup>4</sup>

Notwithstanding the employment of property in public service, it remains private property,<sup>5</sup> and subject to reasonable regulations enacted under the police power, it is protected by the guaranties of private property contained in both federal and state constitutions.<sup>6</sup> In other words, governmental power to regulate public service does not include the absolute control of property

that is incident to ownership.<sup>7</sup> Thus, the failure to allow a regulated public utility the opportunity to earn a fair rate of return would violate the right to possess and protect property.<sup>8</sup>

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## Footnotes

- 1 U.S.—[Marsh v. State of Ala.](#), 326 U.S. 501, 66 S. Ct. 276, 90 L. Ed. 265 (1946).  
Neb.—[Clough v. North Central Gas Co.](#), 150 Neb. 418, 34 N.W.2d 862 (1948).  
Tex.—[Lo-Vaca Gathering Co. v. Missouri-Kansas-Texas R. Co.](#), 476 S.W.2d 732 (Tex. Civ. App. Austin 1972), writ refused n.r.e., (May 31, 1972).  
**Chief end of regulation**  
The chief end of permissible public regulation and control of private property, when affected with a public interest, is that such property will be made to serve adequately the use to which it is devoted and that the rates charged the public for service will at all times be fair and reasonable.  
Pa.—[Hertz Drivurself Stations v. Siggins](#), 359 Pa. 25, 58 A.2d 464, 7 A.L.R.2d 438 (1948).  
**Interest justifying submission**  
A "public interest" necessary to justify subjecting private property to public regulation and control must amount to something more than the desire to regulate conceived out of personal concern as to future events, convenience, or the covetous use of another's property, and mere curiosity or the interests of particular localities which may be affected by the matters in question do not constitute such public interest.  
Okla.—[Oklahoma Natural Gas Co. v. Choctaw Gas Co.](#), 1951 OK 224, 205 Okla. 255, 236 P.2d 970 (1951).  
2 U.S.—[Farmers' Livestock Commission Co. v. U.S.](#), 54 F.2d 375 (E.D. Ill. 1931).  
N.D.—[Minot Special School Dist. No. 1 v. Olsness](#), 53 N.D. 683, 208 N.W. 968, 45 A.L.R. 1337 (1926).  
Pa.—[Scranton-Spring Brook Water Service Co. v. Pennsylvania Public Utility Commission](#), 165 Pa. Super. 286, 67 A.2d 735 (1949).  
**Duplication of service**  
A public service commission's rule prohibiting the duplication of electric service by public utilities does not violate any public utility's constitutional right to own and use private property.  
La.—[Louisiana Power & Light Co. v. Louisiana Public Service Commission](#), 343 So. 2d 1040 (La. 1977).  
**Distributing news**  
The business of gathering and distributing news, as carried on by press associations, is purely private and is not affected with a public interest so as to justify police regulation.  
Mo.—[State ex rel. Star Pub. Co. v. Associated Press](#), 159 Mo. 410, 60 S.W. 91 (1900).  
As to the constitutionality of the regulation of public utilities, see [C.J.S., Public Utilities § 12](#).  
3 U.S.—[Packard v. Banton](#), 264 U.S. 140, 44 S. Ct. 257, 68 L. Ed. 596 (1924).  
Colo.—[Public Utilities Com'n v. Manley](#), 99 Colo. 153, 60 P.2d 913 (1936).  
Ga.—[Mayor and Aldermen of City of Savannah v. Hood Coach Lines](#), 177 Ga. 315, 170 S.E. 196 (1933).  
Ohio—[Mahoning Express Co. v. Public Utilities Commission of Ohio](#), 128 Ohio St. 369, 191 N.E. 368 (1934).  
Wash.—[Kitsap County Transp. Co. v. Manitou Beach-Agate Pass Ferry Ass'n](#), 176 Wash. 486, 30 P.2d 233 (1934).  
4 Ind.—[Farmers' & Merchants' Co-op. Telephone Co., Boswell, Ind. v. Boswell Telephone Co.](#), 187 Ind. 371, 119 N.E. 513 (1918).  
Ohio—[Celina & Mercer County Tel. Co. v. Union-Center Mut. Tel. Ass'n](#), 102 Ohio St. 487, 133 N.E. 540, 21 A.L.R. 1145 (1921).  
5 Tex.—[Gulf, C. & S.F. Ry. Co. v. State](#), 56 Tex. Civ. App. 353, 120 S.W. 1028 (1909), writ refused.  
6 Pa.—[Pennsylvania R. Co. v. Driscoll](#), 336 Pa. 310, 9 A.2d 621 (1939).  
Tex.—[Gulf, C. & S.F. Ry. Co. v. State](#), 56 Tex. Civ. App. 353, 120 S.W. 1028 (1909), writ refused.  
**Declaring company public utility**  
The question of whether or not a given business, industry, or service is a public utility subject to a specific kind of regulation does not depend on the legislative definition, but on the nature of the business or service rendered, and an attempt to declare a company or enterprise to be a public utility, where it is inherently not

such, is, by virtue of the guaranties of the Federal Constitution, void wherever it interferes with the private rights of property.

S.D.—[Aberdeen Cable TV Service, Inc. v. City of Aberdeen](#), 85 S.D. 57, 176 N.W.2d 738 (1970).

Fla.—[State v. Florida East Coast Ry. Co.](#), 69 Fla. 480, 68 So. 729 (1915).

Fla.—[Gulf Power Co. v. Bevis](#), 289 So. 2d 401 (Fla. 1974).

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## 16A C.J.S. Constitutional Law § 850

Corpus Juris Secundum | June 2021 Update

### Constitutional Law

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### PART III. Overview of Protected Personal Rights and Freedoms; Police Power

#### IX. Personal, Civil, and Political Rights and Freedoms

##### D. Other Particular Rights, Freedoms, and Interests

##### 3. Property Rights and Interests

## § 850. Right to take or dispose of property by will or inheritance

[Topic Summary](#) | [References](#) | [Correlation Table](#)

### West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#)  1109

**Generally, the constitutional right of property does not secure to the owner the right to control or dispose of the owner's property after the owner's death, or the right of any person to take by will or inheritance, but the constitutional guaranty does protect the property right possessed by a testator to have enforced limitations affixed to a gift.**

The constitutional guaranty of property ceases to operate at the time of the death of the owner.<sup>1</sup> Generally, therefore, neither the federal nor the state constitution secures any right to the owner to control or dispose of the owner's property after the owner's death,<sup>2</sup> nor do they give anyone the right to take property by inheritance.<sup>3</sup> Consequently, without violating the guaranty of private property, the legislature may restrict the succession of estates of decedents in any manner and may, if it sees fit, repeal absolutely the statute of wills and the statute of descent and distribution.<sup>4</sup>

On the other hand, it has been found that the testamentary disposition of property is a constitutional property right<sup>5</sup> so that a mortmain statute, allowing a lineal descendant to set aside a charitable devise under certain circumstances, has been considered an unconstitutional restraint on the testator's right to devise property.<sup>6</sup> In addition, it has been found that the constitutional guaranty of property does protect the property right possessed by a testator to have enforced the limitations and restrictions

affixed to a gift so that a statute authorizing a beneficiary of a spendthrift trust to release or disclaim the trust, as applied to spendthrift trusts in existence at the time of the enactment of the statute, violates the constitutional provision protecting property rights.<sup>7</sup> Furthermore, a statute providing that an illegitimate child will inherit only from the child's mother and the mother's kindred has been found violative of a constitutional provision declaring absolute and arbitrary power over the property of freemen to be nonexistent.<sup>8</sup>

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#### Footnotes

- 1 Iowa—[In re Emerson's Estate](#), 191 Iowa 900, 183 N.W. 327 (1921).  
Vt.—[In re Hagar's Estate](#), 98 Vt. 235, 126 A. 507 (1924).
- 2 Iowa—[In re Emerson's Estate](#), 191 Iowa 900, 183 N.W. 327 (1921).  
N.M.—[Dillard v. New Mexico State Tax Commission](#), 1948-NMSC-069, 53 N.M. 12, 201 P.2d 345 (1948).  
Vt.—[In re Hagar's Estate](#), 98 Vt. 235, 126 A. 507 (1924).
- 3 Iowa—[In re Emerson's Estate](#), 191 Iowa 900, 183 N.W. 327 (1921).  
Vt.—[In re Hagar's Estate](#), 98 Vt. 235, 126 A. 507 (1924).  
**Forced heirship**  
Legislation abolishing forced heirship for persons competent and 23 years of age or older on the date of their decedent's death violated the provision of the state constitution declaring that no law can abolish forced heirship.  
La.—[Succession of Terry](#), 624 So. 2d 1201 (La. 1993).
- 4 Ala.—[Parker v. Hall](#), 362 So. 2d 875, 99 A.L.R.3d 1014 (Ala. 1978).  
Iowa—[In re Emerson's Estate](#), 191 Iowa 900, 183 N.W. 327 (1921).  
As to the power to impose inheritance taxes, see [C.J.S., Taxation § 1932](#).
- 5 Fla.—[Shriners Hospitals for Crippled Children v. Zrillic](#), 563 So. 2d 64 (Fla. 1990).  
**Rationale**  
While courts historically have viewed testamentary rights as emanating from the legislature and other real property rights as being fundamental, some courts reject this dichotomy as arising from long-abandoned feudal notions of property and have concluded that the testamentary disposition of property is a specifically expressed constitutional property right.  
Fla.—[In re Estate of Magee](#), 988 So. 2d 1 (Fla. 2d DCA 2007).
- 6 Fla.—[Shriners Hospitals for Crippled Children v. Zrillic](#), 563 So. 2d 64 (Fla. 1990).
- 7 Pa.—[In re Borsch's Estate](#), 362 Pa. 581, 67 A.2d 119 (1949).
- 8 Ky.—[Rudolph v. Rudolph](#), 556 S.W.2d 152 (Ky. Ct. App. 1977).

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## 16A C.J.S. Constitutional Law § 851

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### PART III. Overview of Protected Personal Rights and Freedoms; Police Power

#### IX. Personal, Civil, and Political Rights and Freedoms

#### D. Other Particular Rights, Freedoms, and Interests

#### 4. Personal Security

### § 851. Constitutional protection of liberty interest in personal security, generally

[Topic Summary](#) | [References](#) | [Correlation Table](#)

#### West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#)  [1065](#), [1079](#), [1080](#), [1083](#) to [1085](#), [1089](#)

#### The constitution protects a citizen's liberty interest in his or her own bodily security.

The constitution protects a citizen's liberty interest in his or her own bodily security.<sup>1</sup> At liberty's core is the right to be free from arbitrary confinement by bodily restraint.<sup>2</sup> The constitution does not require the sacrifice of personal security,<sup>3</sup> and constitutional provisions for the security of the person are to be liberally construed.<sup>4</sup> The guaranties included in the right of personal security are secured against abridgment by the states by the Fourteenth Amendment of the United States Constitution.<sup>5</sup>

The right of the people to be secure in their homes is a basic right guaranteed by various state constitutions.<sup>6</sup> No right is held more sacred, or is more carefully guarded, by common law, than the right of every individual to the possession and control of his or her own person, free from all restraint or interference unless by the clear and unquestionable authority of the law.<sup>7</sup> State constitutions protect the fundamental premise that each person in the state should be free from unwarranted intrusions by the government.<sup>8</sup>

The government may validly assert and maintain custodial control of an adult person's body as a method of protecting public safety only within the framework of the state's penological interests.<sup>9</sup> Thus, an individual not under the disability of prison confinement has an incontrovertible right, always of constitutional dimensions, to be free from unreasonable interference by police officers and to enjoy security from arbitrary intrusion by the police.<sup>10</sup>

The right of a citizen to drive on a public street with freedom from police interference, unless the person is engaged in a suspicious conduct associated in some manner with criminality, is a fundamental constitutional right.<sup>11</sup> Furthermore, an arrest without probable cause and temporary imprisonment constitute a violation of the arrestee's constitutional rights to be free from unlawful arrest, summary punishment, and unlawful imprisonment.<sup>12</sup>

Generally, a state is not liable for failing to protect individuals from harm by third parties.<sup>13</sup> However, there are two recognized exceptions to this rule.<sup>14</sup> The "special relationship" exception applies where a state actor abuses a special state-created relationship with an individual, such as in the case of custody or involuntary hospitalization.<sup>15</sup> The second exception is the "danger creation exception," under which state actors may be held liable where they affirmatively place an individual in danger the individual would not otherwise have faced.<sup>16</sup>

### ***Rights included in personal security.***

The right of personal security consists in a person's legal and uninterrupted enjoyment of the person's life, limbs, body, health, and reputation.<sup>17</sup> It includes the right to exist and the right to the enjoyment of life while existing, and it is invaded not only by a deprivation of life but also by a deprivation of those things which are necessary to the enjoyment of life according to the nature, temperament, and lawful desires of the individual.<sup>18</sup> It has also been found to include the exemption of a person's private affairs, books, and papers from the scrutiny of others.<sup>19</sup> Public affairs, however, do not come within the protection of such constitutional guaranties.<sup>20</sup>

### ***Effect of violation of guaranty.***

Subject to the limitations and restrictions of the rule, legislation, or acts in violation of the constitutional guaranty of personal security are null and void.<sup>21</sup>

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### **Footnotes**

- 1 U.S.—*Estate of Wasilchen v. Gohrman*, 870 F. Supp. 2d 1115 (W.D. Wash. 2012), *aff'd*, 539 Fed. Appx. 788 (9th Cir. 2013).
- 2 Md.—*Wheeler v. State*, 160 Md. App. 566, 864 A.2d 1058 (2005).
- 3 N.Y.—*People v. Collier*, 85 Misc. 2d 529, 376 N.Y.S.2d 954 (Sup 1975).
- 4 U.S.—*In re Search Warrants Issued on April 26, 2004*, 353 F. Supp. 2d 584 (D. Md. 2004).  
Haw.—*State v. Furuyama*, 64 Haw. 109, 637 P.2d 1095 (1981).
- 5 U.S.—*Hague v. Committee for Industrial Organization*, 101 F.2d 774 (C.C.A. 3d Cir. 1939), *decree modified* on other grounds, 307 U.S. 496, 59 S. Ct. 954, 83 L. Ed. 1423 (1939).
- 6 Kan.—*Monroe v. Darr*, 221 Kan. 281, 559 P.2d 322 (1977).
- 7 U.S.—*Terry v. Ohio*, 392 U.S. 1, 88 S. Ct. 1868, 20 L. Ed. 2d 889 (1968).
- 8 N.M.—*State v. Granville*, 140 N.M. 345, 2006-NMCA-098, 142 P.3d 933 (Ct. App. 2006).
- 9 Me.—*Opinion of the Justices*, 339 A.2d 510 (Me. 1975).

- 10 U.S.—*Pritchard v. Perry*, 508 F.2d 423 (4th Cir. 1975).  
 11 Cal.—*People v. Horton*, 14 Cal. App. 3d 930, 92 Cal. Rptr. 666 (5th Dist. 1971).  
 12 U.S.—*Ford v. Wells*, 347 F. Supp. 1026 (E.D. Tenn. 1972).  
 13 U.S.—*G.C. ex rel. Counts v. North Clackamas School Dist.*, 654 F. Supp. 2d 1226, 251 Ed. Law Rep. 195 (D. Or. 2009).  
 14 U.S.—*G.C. ex rel. Counts v. North Clackamas School Dist.*, 654 F. Supp. 2d 1226, 251 Ed. Law Rep. 195 (D. Or. 2009).  
 15 U.S.—*G.C. ex rel. Counts v. North Clackamas School Dist.*, 654 F. Supp. 2d 1226, 251 Ed. Law Rep. 195 (D. Or. 2009).  
 16 U.S.—*G.C. ex rel. Counts v. North Clackamas School Dist.*, 654 F. Supp. 2d 1226, 251 Ed. Law Rep. 195 (D. Or. 2009).

**Elements of claim**

There are four essential elements of a meritorious "state-created danger claim" that will give rise to a constitutional duty to protect: (1) the harm ultimately caused was foreseeable and fairly direct; (2) a state actor acted with a degree of culpability that shocks the conscience; (3) a relationship between the State and the plaintiff existed such that the plaintiff was a foreseeable victim of the defendant's acts, or a member of a discrete class of persons subjected to the potential harm brought about by the State's actions, as opposed to a member of the public in general; and (4) a state actor affirmatively used his or her authority in a way that created a danger to the citizen or that rendered the citizen more vulnerable to danger than had the State not acted at all.

- U.S.—*Walter v. Pike County, Pa.*, 544 F.3d 182 (3d Cir. 2008).  
 17 N.J.—*Bednarik v. Bednarik*, 18 N.J. Misc. 633, 16 A.2d 80 (Ch. 1940).

**House as castle**

- Mich.—*Vanden Bogert v. May*, 334 Mich. 606, 55 N.W.2d 115 (1952).  
 18 Ga.—*McDaniel v. Atlanta Coca-Cola Bottling Co.*, 60 Ga. App. 92, 2 S.E.2d 810 (1939).  
 19 La.—*Jung Hotel v. Insurance Com'n of La.*, 179 La. 551, 154 So. 448 (1934).  
 N.J.—*Bednarik v. Bednarik*, 18 N.J. Misc. 633, 16 A.2d 80 (Ch. 1940).

As to the federal congressional power of investigation, see *C.J.S., United States* §§ 32 to 42.

As to the power of a state agent to conduct investigations, see *C.J.S., States* § 238.

- 20 Wash.—*Frach v. Schoettler*, 46 Wash. 2d 281, 280 P.2d 1038 (1955).  
 21 U.S.—*Goodman v. U.S.*, 108 F.2d 516, 127 A.L.R. 265 (C.C.A. 9th Cir. 1939).  
 Colo.—*Potter v. Armstrong*, 110 Colo. 198, 132 P.2d 788 (1942).

N.J.—*Neafie v. Hoboken Printing & Publishing Co.*, 75 N.J.L. 564, 68 A. 146 (N.J. Ct. Err. & App. 1907).

**Jurisdiction of neglected and dependent children**

A statute giving a court jurisdiction of neglected and dependent children under a specified age is not invalid in taking away the right of people to be secure in their houses.

U.S.—*U S ex rel Yonick v. Briggs*, 266 F. 434 (W.D. Pa. 1920).

## 16A C.J.S. Constitutional Law § 852

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### Constitutional Law

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### PART III. Overview of Protected Personal Rights and Freedoms; Police Power

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#### 4. Personal Security

## § 852. Reputation

[Topic Summary](#) | [References](#) | [Correlation Table](#)

### West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#)  1082

**Damage to reputation, by itself, is insufficient to state a constitutional claim; the interest in protecting an individual's reputation must be weighed against society's interest in encouraging and fostering vigorous public debate.**

While the preservation of one's reputation is a recognized and protected interest under some state constitutions,<sup>1</sup> damage to reputation, by itself, is insufficient to state a constitutional claim.<sup>2</sup> The interest in protecting an individual's reputation is not paramount in all circumstances.<sup>3</sup> It must be weighed against society's interest in encouraging and fostering vigorous public debate.<sup>4</sup>

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### Footnotes

<sup>1</sup> Pa.—[G.V. v. Department of Public Welfare](#), 91 A.3d 667 (Pa. 2014).

- 2 U.S.—*Zutz v. Nelson*, 601 F.3d 842 (8th Cir. 2010); *Kohlman v. Village of Midlothian*, 833 F. Supp. 2d 922 (N.D. Ill. 2011).  
Nev.—*Hernandez v. Bennett-Haron*, 287 P.3d 305, 128 Nev. Adv. Op. No. 54 (Nev. 2012).
- 3 Colo.—*Shoen v. Shoen*, 2012 COA 207, 292 P.3d 1224 (Colo. App. 2012).
- 4 Colo.—*Shoen v. Shoen*, 2012 COA 207, 292 P.3d 1224 (Colo. App. 2012).

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### PART III. Overview of Protected Personal Rights and Freedoms; Police Power

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#### 4. Personal Security

## § 853. Limitations and restrictions on personal security right

[Topic Summary](#) | [References](#) | [Correlation Table](#)

### West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#)  [1065](#), [1079](#), [1080](#), [1083](#) to [1085](#), [1089](#)

**The right to safety and security in person and property is subject to reasonable regulation and restraint in the interests of common safety and welfare.**

The right to safety and security in person and property is subject to reasonable regulation and restraint in the interests of common safety and welfare.<sup>1</sup> Accordingly, the right to freedom from invasion or assault is subject to some slight interference for the good of society, and it has been found that the forcible taking of a specimen of breath from a motorist for the purpose of a drunkometer test does not violate the constitutional guaranty against disturbance in private affairs.<sup>2</sup>

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### Footnotes

<sup>1</sup>

Ala.—[Alabama State Federation of Labor v. McAdory](#), 246 Ala. 1, 18 So. 2d 810 (1944).  
**Prohibition against dogs running at large**

N.Y.—[Blair v. Du Mond](#), 280 A.D. 1021, 117 N.Y.S.2d 23 (3d Dep't 1952), order resettled, 281 A.D. 776, 117 N.Y.S.2d 918 (3d Dep't 1953).  
2 Ariz.—[State v. Berg](#), 76 Ariz. 96, 259 P.2d 261 (1953) (overruled in part on other grounds by, [State v. Pina](#), 94 Ariz. 243, 383 P.2d 167 (1963)).

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## 16A C.J.S. Constitutional Law § 854

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### PART III. Overview of Protected Personal Rights and Freedoms; Police Power

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#### 4. Personal Security

## § 854. Health and medical treatment

[Topic Summary](#) | [References](#) | [Correlation Table](#)

### West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#)  [1065](#), [1079](#), [1080](#), [1083](#) to [1085](#), [1089](#)

### Rights have been recognized with respect to the enjoyment of health by an individual and to medical treatment.

The enjoyment of one's health is a fundamental right which is constitutionally protected against unreasonable and discriminatory restriction.<sup>1</sup> The right to protect one's health may also be encompassed within the fundamental liberties protected by federal and state constitutional provisions, and this right should extend to a right to the benefit of public funding available for that purpose without unreasonable discrimination.<sup>2</sup> However, the constitutional right of personal liberty does not give individuals the right to obtain certain drugs free of the lawful exercise of the government police power.<sup>3</sup>

Few matters more directly implicate personal autonomy and individual privacy than medical judgments affecting one's bodily integrity and health.<sup>4</sup> In this regard, the right to make decisions about medical treatments for oneself or one's children is a fundamental liberty and privacy right.<sup>5</sup> Moreover, a terminally ill but competent patient has a right to refuse medical treatment or to have it withdrawn.<sup>6</sup> Accordingly, individuals have an inherent right to prevent pointless, even cruel, prolongation of the

act of dying, and as a matter of constitutional law, a competent adult who is incurably and terminally ill has the right, if he or she so chooses, not to resist death and to die with dignity.<sup>7</sup>

The right of a competent person to forego medical treatment by either refusal or withdrawal derives from the common law rights of self-determination and informed consent, from the liberty interest protected by the Fourteenth Amendment, and perhaps even more so from the state constitutional right to enjoy and defend one's life and liberties.<sup>8</sup> The right to refuse medical treatment is to be determined by balancing the individual interest against countervailing state interests, and in striking the balance, account is to be taken of the prognosis and of the magnitude of the proposed invasion of bodily integrity.<sup>9</sup> The countervailing state interests that are potentially implicated by an individual's rejection of lifesaving medical treatment are preservation of life, protection of the interest of innocent third parties, prevention of suicide, and the maintenance of the ethical integrity of the medical profession.<sup>10</sup> The state's interest in the preservation of life does not invariably control the right to refuse lifesaving medical treatment in cases of positive prognosis,<sup>11</sup> and it has been found that no state interest, either legal or societal, exists to the degree necessary to outweigh the constitutional right of an incompetent suffering from a terminal illness to choose medical treatment.<sup>12</sup>

### *Psychotropic medication.*

The right to refuse psychotropic medication is a fundamental right protected by the constitutional guarantees of liberty and privacy.<sup>13</sup> Such involuntary medication cannot be ordered unless a court finds by clear and convincing evidence that the treatment is in the best interests of the patient.<sup>14</sup>

### *Affordable Care Act.*

The Affordable Care Act's individual mandate to maintain a minimum level of health insurance does not violate the substantive due process right to medical autonomy; the individual mandate does not require that an individual select a particular insurance plan, does not require that the individual use an insurance plan once purchased, and does not restrict an individual's right to contract for care directly with the physician of his or her choosing, and forcing an individual to expend funds on either medical insurance or a penalty implicates economic interests that are not protected by substantive due process.<sup>15</sup> The courts do not recognize a fundamental right to remain uninsured and free from the mandatory payment.<sup>16</sup>

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#### Footnotes

- 1 N.J.—*Right to Choose v. Byrne*, 169 N.J. Super. 543, 405 A.2d 427 (Ch. Div. 1979), decision modified on other grounds, 91 N.J. 287, 450 A.2d 925 (1982).
- 2 N.J.—*Right To Choose v. Byrne*, 165 N.J. Super. 443, 398 A.2d 587 (Ch. Div. 1979).
- 3 U.S.—*Carnohan v. U.S.*, 616 F.2d 1120 (9th Cir. 1980).
- 4 Mont.—*Armstrong v. State*, 1999 MT 261, 296 Mont. 361, 989 P.2d 364 (1999).
- 5 Alaska—*Huffman v. State*, 204 P.3d 339, 243 Ed. Law Rep. 461 (Alaska 2009).
- 6 N.Y.—*Von Holden v. Chapman*, 87 A.D.2d 66, 450 N.Y.S.2d 623 (4th Dep't 1982).
- Fundamental nature of right**  
The right of a terminally ill cancer patient to choose or reject a cancer treatment on the advice of a licensed medical doctor is of the most fundamental nature.
- N.J.—*Suenram v. Society Valley Hospital*, 155 N.J. Super. 593, 383 A.2d 143 (Law Div. 1977).
- 7 N.Y.—*Eichner v. Dillon*, 73 A.D.2d 431, 426 N.Y.S.2d 517 (2d Dep't 1980), order modified on other grounds, 52 N.Y.2d 363, 438 N.Y.S.2d 266, 420 N.E.2d 64 (1981).

- 8 Ky.—[Woods v. Com.](#), 142 S.W.3d 24 (Ky. 2004).  
**Right to refuse treatment fundamental**  
The right to refuse medical treatment is a fundamental right in this country where personal security, bodily integrity, and autonomy are cherished liberties.
- Ohio—[Steele v. Hamilton Cty. Community Mental Health Bd.](#), 90 Ohio St. 3d 176, 2000-Ohio-47, 736 N.E.2d 10 (2000).
- 9 Mass.—[Matter of Spring](#), 380 Mass. 629, 405 N.E.2d 115 (1980).
- 10 Mass.—[Commissioner of Correction v. Myers](#), 379 Mass. 255, 399 N.E.2d 452 (1979).
- 11 Mass.—[Commissioner of Correction v. Myers](#), 379 Mass. 255, 399 N.E.2d 452 (1979).
- 12 Ohio—[Leach v. Akron General Medical Center](#), 68 Ohio Misc. 1, 22 Ohio Op. 3d 49, 426 N.E.2d 809 (C.P. 1980).
- 13 Alaska—[Bigley v. Alaska Psychiatric Institute](#), 208 P.3d 168 (Alaska 2009).
- 14 Alaska—[Bigley v. Alaska Psychiatric Institute](#), 208 P.3d 168 (Alaska 2009).
- 15 [Coons v. Lew](#), 762 F.3d 891 (9th Cir. 2014), as amended on other grounds, (Sept. 2, 2014).
- 16 [Coons v. Lew](#), 762 F.3d 891 (9th Cir. 2014), as amended on other grounds, (Sept. 2, 2014).

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